

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-13555-scc

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5 In the Matter of:

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7 LEHMAN BROTHERS HOLDINGS, INC.,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15

16 December 14, 2017

17 10:45 AM

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21 B E F O R E :

22 HON SHELLEY C. CHAPMAN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: JONATHAN

1 HEARING re RMBS Claims Estimation Trial

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25 Transcribed by: Sonya Ledanski Hyde

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14 SCOTT LEWIS

15 PAUL SHALHOUB

16 PATRICK MOHAN  
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P R O C E E D I N G S

THE COURT: Apologize for the delay. It's the  
plan administrator's fault.

MR. SHUSTER: Good morning, Your Honor.

THE COURT: Are you ready to go? Okay, Mr.  
Aronoff, please come back up.

MR. ARONOFF: Good morning.

THE COURT: How are you? I totally messed up your  
aspiration to be done by noon. I apologize.

MR. SHUSTER: So did my team. We've added some  
additional material, so --

THE COURT: Okay.

MR. SHUSTER: -- I don't think noon was realistic.

THE COURT: So we're going to just -- we're just  
going to do what we're going to do and if Mr. Aronoff needs  
to come back next week, is that a possibility?

MR. SHUSTER: Yes, Monday, I think.

MR. ARONOFF: The only caveat is --

THE COURT: Yes?

MR. ARONOFF: -- I have the same recurring  
obligation on Monday morning --

THE COURT: Obligation?

MR. ARONOFF: -- that I had yesterday.

THE COURT: Okay. Okay.

MR. ARONOFF: So probably not before 11:30.

1 THE COURT: That works for us because we have  
2 other matters on in the morning, so --

3 MR. SHUSTER: Excellent.

4 THE COURT: -- that'll work.

5 MR. SHUSTER: Wonderful.

6 THE COURT: Okay. All right.

7 MR. SHUSTER: Thank you, Your Honor.

8 DIRECT EXAMINATION OF JAMES ARONOFF

9 BY MR. SHUSTER:

10 Q Mr. Aronoff, good morning.

11 A Good morning.

12 Q I wanted to return briefly to a loan we discussed  
13 yesterday which was 2979. Going to ask Mr. Lieberman to hand  
14 you a document and -- if he may approach the Court --

15 THE COURT: Sure.

16 Q -- and hand up this document.

17 THE COURT: Thank you.

18 Q So this is a letter -- it's another extract from the  
19 loan file, so just for administrative purposes here, it's  
20 got the same -- this is not of concern to you particularly,  
21 but it's got the same exhibit number, it's TRX-1 Loan and  
22 then it's got the loan number ending in 2979, and it should  
23 be inserted in one's binder for those who are disposed to do  
24 so.

25 A Mr. Shuster, does the binder version have the name

1 redacted? Mine doesn't.

2 Q Yes, the -- well, the binder version doesn't but the  
3 version we --

4 A Okay.

5 Q -- would put up on the screen does. So thank you for  
6 pointing that out. I just wanted to -- perhaps you recall  
7 that on this loan -- and you're free to refer back to it,  
8 but Mr. Grice referred to -- in the course of his narrative  
9 noted that the borrower's business was subject to seasonal  
10 fluctuations and that the subject transaction was closed on  
11 or before the onset of the mortgage crisis, and borrowers  
12 employed in many occupations experience dramatic losses in  
13 income. So this was, if you recall, an '04 loan -- year end  
14 '04?

15 A Yes.

16 Q Sorry, '06. My apologies. I misspoke, '06. What is  
17 this -- what if anything does this hardship letter tell you  
18 about whether and when the borrower would've experienced a  
19 drop-off in income?

20 A The opening statement says that business was excellent  
21 until 2007, and then the borrower goes on to explain why  
22 after that time period he experienced some financial  
23 difficulties.

24 Q Now, was it -- is it your view that there was an  
25 adverse and material effect on this loan?

1 A Yes.

2 Q So, does the hardship letter change your view on that?

3 A It does not.

4 Q Generally, do hardship letters explaining why borrowers  
5 may have experienced an inability to pay or to pay on the  
6 same terms change your original conclusion as to AMA on any  
7 particular loan?

8 A Hardship letters are generally the opportunity of the  
9 borrower to explain to the servicer or the current owner of  
10 the loan why they need relief and to the extent there is  
11 information in the hardship letters in the file that bears  
12 on both the breach finding and the AMA determination that's  
13 taken into consideration --

14 Q I see.

15 A -- in the course of the forensic review. My point is  
16 the hardship letter isn't dispositive one way or the other  
17 on AMA, but it often when looking at a loan after it's  
18 closed it gives you some further information about the  
19 circumstances that existed at the time the loan was  
20 originated.

21 THE COURT: Can I interrupt, please, Mr. Shuster?  
22 So, I have two questions. One is, in every loan file in  
23 which there is or was a hardship letter, did one -- did the  
24 applicable servicing firm review the hardship letter?

25 MR. ARONOFF: I don't know if the servicing firm



1 did. The loan review firms that were working for us --

2 THE COURT: I'm sorry, I misspoke. I meant the  
3 loan review firms.

4 MR. ARONOFF: They know that that is an important  
5 source of potential information to support a breach finding  
6 and to the extent there's contradictory information from the  
7 story that they're trying to develop, yes, they need to look  
8 at that if it contains facts that bear on the finding.

9 THE COURT: Okay. That -- I hear you, but that  
10 doesn't quite answer my question. Do you know as a fact  
11 whether the loan review firms as part of their standard  
12 operating procedure, if there was a hardship letter in the  
13 file, did they review it before rendering their conclusion on  
14 whether or not there was a breach?

15 MR. ARONOFF: I don't know personally whether they  
16 looked at each and every one. They would be a very critical  
17 aspect of a customary forensic loan review of this type.

18 THE COURT: Okay. Thank you.

19 MR. ARONOFF: They should have known to.

20 THE COURT: Thank you.

21 Q Your view, however, remains that even where there are  
22 hardship letters that the adverse and material effect  
23 determination is based on the increased risk and loss on the  
24 loan?

25 A I believe so. The hardship letter would bear on the

1       likelihood that the threshold fact that was the basis of the  
2       breach finding was present in the file or not, and if the  
3       threshold fact and the breach finding were, in fact,  
4       identified then the analysis would be, is this the type of  
5       breach finding given the context of this file that would  
6       result in a material adverse effect to the investor.

7       Q       Let us turn to Loan 1643.

8       A       Thank you.

9               MR. SHUSTER:    May Mr. Lieberman approach to hand  
10       up --

11              THE COURT:    Sure.   Thank you.

12       Q       Just one further question on hardship letters.   Where  
13       there isn't a hardship letter in the file, I take it it's  
14       still possible to make both a breach finding -- a breach  
15       determination and an AMA determination?

16       A       Absolutely.   Yes.

17       Q       Okay.   So, I think we can get through this loan  
18       quickly, Mr. Aronoff.   You can turn to, I think  
19       (indiscernible) that you have, TRDX-154 before you.   So why  
20       don't you describe, if you would, the claim that's being  
21       presented here.

22       A       Sure.   This is another example of a misrepresentation  
23       of income breach finding, and in this case the primary  
24       supporting evidence is BLS, so this is a loan that closed on  
25       or about July 18th -- I see that's when the application was,

1 I don't have the note in front of me -- where the borrower  
2 stated monthly income of \$13,800 a month or so, which is  
3 about 165,000 annually.

4 They're a registered nurse, and the BLS search for  
5 registered nurses in the location where the borrower was for  
6 the time period in question at the 90th percentile was about  
7 93,300 annually, which translates into a monthly income  
8 about \$8,000 a year. So -- I'm sorry.

9 Q Would you turn to page 13 in the claim package?

10 A Yes.

11 Q So, can you identify that, please?

12 A Yeah, on there we can see the -- similar to the one we  
13 looked yesterday, the printout from the BLS search and you  
14 can see the state, the area which is an (indiscernible).  
15 It's defined as that area in California. The title is  
16 registered nurses. And then it gives the median, the 75th  
17 percentile, and the 90th percentile, and you can see under  
18 90th which is the reference income that would be used, you  
19 see 95,300 there.

20 Q Okay. Turn to now, if you would, to TRDX-191 in your  
21 deck.

22 A Lot of stuff in a little space.

23 Q Yes.

24 A Yes.

25 Q So, could you tell us what you are intending to convey

1 here?

2 A Yeah. This -- the first bullet is just a summary of  
3 what I just stated with respect to the facts. So is the  
4 second. But I wanted to point out that even though the BLS  
5 may be the primary supporting data for a breach finding  
6 where BLS is used, it's in almost every case accompanied by  
7 red flags, as we call them, that would indicate to the  
8 forensic loan reviewed that the stated income doesn't make  
9 sense for other reasons and that would, you know, be used,  
10 again, in reference to the totality of the file to support,  
11 based on a BLS number -- income, that's it's more likely  
12 than not that the income was misstated.

13 And in this case, some of the red flags that were  
14 identified is that at a monthly income of almost \$14,000, if  
15 you compare that income to -- let's look at the application  
16 again if we can on Claim Package Page 6. There's a box  
17 that's circumscribed there which is the income, but if you  
18 move to the right you can see the housing expense and this  
19 borrower is a renter prior to the -- obtaining the loan and  
20 has a monthly rental obligation of \$1,300.

21 If you now go to the next page, Page 7, and look  
22 at the borrower's monthly debt obligations in terms of other  
23 debt -- and they continue on the next page, on Page 8. So  
24 the numbers at the bottom of the liabilities column on Page  
25 7 are not going to add up, but if you add them all up on

1 Page 7 and Page 8, they come to total debt of about \$41,000.  
2 The monthly debt obligation of \$1,000.

3 And then one other data point I'd like to refer  
4 you to is, you can see the borrower's assets, total assets.  
5 Liquid assets are about \$25,000. So the analysis that would  
6 be done in terms of red flags looking at a borrower with the  
7 income that was stated, is they appear to have north of 11 -  
8 - more than \$11,000 in free cash due every month. They have  
9 \$25,000 in the bank and \$41,000 in credit card debt.

10 Why would that be? If they only have 2,400 of  
11 obligations every month and they've incurred all this credit  
12 card debt that they can easily pay off. Okay, maybe that's  
13 their choice. Maybe they like debt. But where is it? It's  
14 not in the bank. So, it just calls into question.

15 Now, we don't know for certainty any of this.  
16 That's why they're red flags. But an experienced loan  
17 reviewer would look at the amount of income, look at the  
18 assets, look at the credit, and say, "Does this credit and  
19 this asset position make sense for someone who's earning  
20 this type of income?" And that would lead to the inquiry --

21 THE COURT: I'm sorry, I'm just not following you,  
22 Mr. Aronoff. I don't understand. I don't understand.

23 MR. ARONOFF: I'll try again, may I?

24 Q Well, are you -- let me just to help it along, are you  
25 -- you're pointing to -- you're saying that in addition to

1 the BLS that was relied upon, essentially there were other  
2 red flag in the file that suggested that it was more likely  
3 than not that the borrower's income was not what it was  
4 represented to be on the loan application?

5 A Correct.

6 THE COURT: Okay. Well, that's what I don't  
7 understand. Why is it that having \$41,000 in credit card  
8 debt which we can agree seems not like a great thing, but  
9 why would having \$41,000 in credit card debt be a red flag  
10 that the stated income is not what it says?

11 MR. ARONOFF: Because if that borrower actually  
12 made \$165,000 a year --

13 THE COURT: Yes.

14 MR. ARONOFF: -- they would either have less  
15 credit card debt, it would be paid off, or they would have  
16 more money in the bank.

17 THE COURT: That's your hypothesis. That's just a  
18 hypothesis.

19 MR. ARONOFF: It is. It is. But it's how the  
20 story of these files when you're looking at a loan file and  
21 you see an income number, the first thing a loan underwriter  
22 would look at is these kinds of things. And as I said, this  
23 is not the basis for the claim but it's just an inquiry of  
24 the underwriter to say, "If this borrower has in excess of  
25 \$11,000 of free cash available every month, why are they

1 incurring so much debt and why don't they have more liquid  
2 assets in the bank?"

3 That's -- and that's the only thing. They're not  
4 drawing any conclusions, it's just an inquiry. And then  
5 taken with the statistical database with BLS that shows that  
6 in the 90th percentile of registered nurses the income one  
7 would expect is about \$70,000 less per annum than this  
8 borrower claims. That is the basis for the conclusion by  
9 the reviewer that there's a misstatement of income here.

10 THE COURT: But hypothetically, this borrower  
11 could be paying private school or college tuition, right?

12 MR. ARONOFF: Absolutely.

13 THE COURT: Hypothetically, this borrower could be  
14 paying any number of things that are not reflected in this  
15 file that would account for the delta between the amount of  
16 income that he or she makes and would further explain why  
17 they have a lot of credit card debt because hypothetically  
18 they're sending two children to private school, or  
19 hypothetically they're caring for an elderly parent, or  
20 hypothetically in order to work as a registered nurse this  
21 person has to pay daycare expenses.

22 I mean, I don't know if any of those are true, and  
23 I just -- I'm struggling to -- I see what you're saying  
24 about the story of the loan, but when I can come up with  
25 other hypotheses that explain it, I don't understand why.

1 What you're saying to me is, in essence I believe, that  
2 you've seen this enough to know that when you have these red  
3 flags against -- compared with that kind of a BLS profile,  
4 something's amiss. I mean that -- it's kind of an  
5 impressionistic conclusion, right?

6 MR. ARONOFF: Absolutely.

7 THE COURT: Okay.

8 MR. ARONOFF: It's the art of the review, not the  
9 science.

10 THE COURT: Very good. Thank you.

11 Q Mr. Aronoff, let me just -- you're drawing inferences  
12 from the information you see in the loan file, right?

13 A These are standard areas of inquiry that an experienced  
14 loan reviewer would look at and they may impose their own  
15 subjective experience on the meaning of that or not. But in  
16 this particular example where BLS is the basis, and I stand  
17 by that as a basis for the claim, upon review just in the  
18 way I would look at a file, I notice that the credit and the  
19 assets of the borrower don't contradict the story.

20 Q Yeah. Let me direct your attention to Page 7 of the  
21 loan application. Sorry, Page 7 of 48 in the claim package.  
22 So I see there there's a indication that the borrower should  
23 indicate assets and liabilities. So what sorts of  
24 liabilities are identified here?

25 A That's the credit card debt I was referring to.



1 There's some installment --

2 Q Does that call for the borrower to disclose all  
3 recurring liabilities?

4 A Those should be listed there, yes.

5 Q So if the borrower was paying private school tuition,  
6 for example, wouldn't that be disclosed there?

7 A Not necessarily, unless they took out a loan to pay --

8 Q What about other liabilities?

9 A Those types of expenses would not necessarily appear on  
10 the application, but if a loan underwriter in the course of  
11 making an underwriting decision saw this type of  
12 discrepancy, the red flags I've talked about, it would  
13 certainly cause the loan underwriter to inquire and say,  
14 "Hey, what's happening to all the money that you're making  
15 and we don't see in your assets?" So, it may come out in  
16 that kind of conversation. But that -- private school  
17 tuition probably would not be listed on the application in  
18 the normal course.

19 Q The one thing the application does all for is a listing  
20 of child care expense, correct? Towards the bottom in  
21 liabilities, job related expense, child care, et cetera.

22 A Yes.

23 Q See anything there for child care, any indication of  
24 children on the application?

25 A No.

1 Q Mr. Aronoff, let me just direct your attention to the  
2 monthly income and combined housing expense information  
3 section of the loan application on Page 6.

4 A Okay. I'm there.

5 Q So let's just go through those. The application calls  
6 for base employment income and then what else does it call  
7 for on a line by line basis?

8 A Well, to the extent it's applicable and the borrower  
9 wants more than the borrower's base salary considered as a  
10 source of repayment for the loan, the borrower would list  
11 overtime, bonuses, commission; and then special types of  
12 income: dividends and interest and net rental income. And  
13 then there's kind of a miscellaneous box for any other type  
14 of income that isn't captured in those prior boxes. And  
15 those are blank in this case.

16 Q And are those -- do all of the loan applications  
17 essentially call for the same sort of breakout of income and  
18 identification of sources of income other than base  
19 employment income?

20 A Yes. You can see at the little bottom corner it says,  
21 "Fannie Mae Form 1003," and the standard 1003 which was used  
22 in almost every case here, the application, all include  
23 that.

24 Q Thank you.

25 A In the same format.

1 Q Thank you. Let us go to Loan 8742.

2 THE COURT: Thank you. We have mortgages in Coon  
3 Rapids, Minnesota in this one.

4 MR. SHUSTER: So it would appear. It sounds like  
5 a nice place to be.

6 THE COURT: You've undoubtedly been there, Mr.  
7 Shuster.

8 MR. SHUSTER: Yes. I wish I had.

9 THE COURT: You wish you were there right now.

10 MR. SHUSTER: Might -- sounds relaxing. Sounds  
11 relaxing.

12 Q Would you be good enough, once you've had the necessary  
13 materials before you to tell us what claim is being  
14 presented here?

15 A Yes. This is a misrepresentation of debt claim as  
16 opposed to misrepresentation of incomes we've looked at, and  
17 in this case the forensic loan review based on DataVerify  
18 documentation and, I believe, an audit credit report  
19 identified two undisclosed mortgages that the borrower had  
20 obtained prior to the closing of the subject loan with total  
21 debt of about \$206,000 that was not disclosed on the  
22 application.

23 Q Okay. So why don't we look at the loan application?

24 A Okay, and that can be found in the claim file at Pages  
25 6 and -- starting on Page 6, I believe. No, starting on

1 Page 4 running through Page 7.

2 Q Okay, take us through it, if you would.

3 A Yeah, if you look at Page 6 on the right, their listing  
4 of the assets and liabilities and there is no mention  
5 anywhere on this application -- which is dated 8/25/06, by  
6 the way -- that the borrower has mortgages at all, let alone  
7 in the amounts that I just described. They just show a  
8 couple of what appear to be credit cards and then an  
9 obligation to a gym.

10 Q Okay. So why don't we look at the evidence of  
11 preclosing mortgages presented to the plan administrator by  
12 the Trustee?

13 A Sure. The first piece of information that supports the  
14 existence of debt that was undisclosed can be found at the  
15 claim file, Page 11.

16 Q And what is that document?

17 A This is what I've referred to previously as a post --  
18 as an audit credit report.

19 Q Which is to say, a credit report pulled by one of the  
20 forensic loan review firms in the post-loan process?

21 A In this case, it appears to be so and as I mentioned  
22 yesterday, sometimes there are audit reports that were  
23 pulled by the servicers that give us information that post-  
24 dates the loan that provides some information. But this one  
25 given the date on the top right of December 15 appears to be

1 something was pulled by the related mortgage review firm.  
2 And we see the boxes that are highlighted. They -- and I  
3 may refer you to the very top where it has the borrower's  
4 name and Social Security number just to confirm that this is  
5 information pertaining to the same borrower.

6 THE COURT: Mr. Aronoff, this just a purely --  
7 question. How much is this loan? How much is this loan  
8 for?

9 MR. ARONOFF: The loan amount.

10 THE COURT: The loan amount. It's \$84,000?

11 MR. ARONOFF: Let's -- is that what it says on the  
12 app?

13 THE COURT: Yeah.

14 MR. ARONOFF: That's the amount requested and  
15 there's the final application. That sounds right to me.

16 THE COURT: And is there a way to tell the  
17 purchase price of the subject property?

18 MR. ARONOFF: If we go -- there's probably  
19 something in the file we can look to see what the LTD was.  
20 Let me look at the application, because I don't know if it  
21 was a -- let's look this --

22 THE COURT: That's what I don't understand.

23 MR. ARONOFF: This was a purchase, so --

24 THE COURT: I'm just -- this is not a trick  
25 question. Here's the part I don't understand. Mr. Shuster,

1 if you'll indulge me. If you look at Page 7 of the loan  
2 application under Roman 7a, purchase price it says \$420,000.

3 MR. ARONOFF: Yes. This may be a second.

4 THE COURT: This may be --

5 MR. ARONOFF: A second lien.

6 THE COURT: Mortgage.

7 MR. ARONOFF: So they may have taken out a first  
8 and this is a subordinate loan. Let me look.

9 THE COURT: See, then if you look under Roman 5 on  
10 Page 5 under monthly income and combined housing expense,  
11 you see it says, "First mortgage."

12 MR. ARONOFF: Yes, it was not unusual. I don't  
13 have the loan file here.

14 THE COURT: Yeah.

15 MR. ARONOFF: But it was not unusual for a  
16 borrower to take out a first and then piggyback second at  
17 the same time --

18 THE COURT: Right.

19 MR. ARONOFF: -- because they couldn't afford the  
20 down payment.

21 THE COURT: Yeah.

22 MR. ARONOFF: And so many lending institutions  
23 would provide them with a first and then a second --

24 THE COURT: Okay.

25 MR. ARONOFF: -- at the same time, and the second

1 would have a higher interest rate.

2 THE COURT: Okay. But that's where my confusion  
3 is coming in, is that this is one the loan application,  
4 first mortgage is disclosed. Just trying to --

5 MR. ARONOFF: Well again, if there was a first  
6 that was taken out as part of the purchase -- same purchase  
7 obligation, the obligation on the first as well as the  
8 second which is probably this 828 number for other  
9 financing. That's probably the P and I on the subject loan.  
10 You'd have to -- you would want to include the first as part  
11 of the borrower's new bundle of total obligations.

12 THE COURT: Okay, but that's my question. If this  
13 is a -- and I'm sorry if maybe I'm just tired. If this is a  
14 misrepresentation of debt case, right, and on this  
15 application this borrower is disclosing a first mortgage,  
16 are we talking about -- is that the debt that's been  
17 misrepresented or is there on top of that, other debt that's  
18 been misrepresented?

19 MR. ARONOFF: We're talking about additional debt,  
20 Your Honor.

21 THE COURT: Additional debt --

22 MR. ARONOFF: Yes.

23 THE COURT: -- that's been -- okay. Okay. So in  
24 addition to disclosing that he's got a first mortgage where  
25 the P and I is \$2,500-odd a month, what you're saying is

1 that there is, in addition to that, other undisclosed debt?

2 MR. ARONOFF: Yes, and if we look at the credit  
3 report --

4 THE COURT: Yes. What page would that be?

5 MR. ARONOFF: Well, I may not be on the credit  
6 report, but if we look at the next document we're going to  
7 look at --

8 THE COURT: Yep.

9 MR. ARONOFF: -- which is the -- on Page 15, we  
10 see that in fact it's -- let me confirm before I say it.  
11 It's a different property address. You see, if you look on  
12 the first page of the app, the -- I don't want to read it  
13 out because it's specific, but you can see the Spring Street  
14 property there is the subject property on the first page of  
15 the application.

16 THE COURT: Yep, yep, yep.

17 MR. ARONOFF: And then if we look at this Accurint  
18 report -- DataVerify report, I'm sorry -- DataVerify report  
19 on Page 15, can see the circled boxes and the property  
20 address for these undisclosed liens is a different property.  
21 Under property address, there's registration date then  
22 property address, and here we have a 115th Avenue property  
23 that is the subject property for these undisclosed liens.

24 THE COURT: Could you just give me a second to  
25 look at this, if you would?



1 MR. ARONOFF: Sure.

2 THE COURT: Okay. I really -- I hate to be so  
3 disruptive.

4 MR. SHUSTER: Not at all.

5 MR. ARONOFF: This is important.

6 THE COURT: I'm just trying to follow this report  
7 because on the second block on the subject property, 4100  
8 Spring Street, right, it shows that status as inactive,  
9 right?

10 MR. ARONOFF: Yes. That would've been as of the  
11 12/2015 date. Remember, this is audit. It's looking back.

12 THE COURT: Yeah, yeah, yeah. Okay. I guess what  
13 I'm trying to figure out is that -- I'll leave it there. I  
14 mean, I --

15 Q The first document you showed us, Mr. Aronoff, was a  
16 credit report, correct?

17 A Yes.

18 Q And that identifies the two undisclosed mortgages on  
19 the open date as August of '06?

20 A That's correct.

21 Q And then next one that you directed us to, which is  
22 Page 15, what is that document?

23 A This is a DataVerify. We discussed that yesterday.  
24 It's a electronic service that provides information about  
25 properties and real estate debts among other things that may

1 have existed with respect to our borrower at the time the  
2 loan was originated.

3 Q And where does DataVerify pull that information?

4 A I believe in this case, it was MIRS.

5 Q And so here there's a registration date for the  
6 undisclosed mortgages?

7 A Yes. And the registration date would be the date on  
8 which this debt was reported to MIRS which has to be  
9 subsequent to the time the debt was obtained or opened.

10 Q And is the registration date that's identified prior to  
11 the date of the signed loan application on the subject loan?

12 A Yes, it is.

13 Q So let's just talk about inactive for a moment --  
14 active and inactive. You mentioned that the designation  
15 inactive is a designation as of the time that the credit  
16 report is pulled, correct?

17 A Or in this case, the MIRS report through DataVerify.

18 Q Okay. And that report was pulled when?

19 A If you look at the bottom right-hand corner, it appears  
20 to have been printed, anyway, on December 7th, 2015.

21 Q So does it -- the status of inactive, does that -- for  
22 the undisclosed debts, does that tell you anything about the  
23 status of those -- does inactive designation mean that a  
24 loan was inactive on the registration date?

25 A It doesn't tell you anything about that. The purpose -

1 - the use of this information is to get a snapshot on the  
2 date the loan was -- the subject loan was originated to see  
3 if there was debt of the borrower that was undisclosed.

4 Q And so we don't know when the loan became inactive, all  
5 we know is that these undisclosed mortgages were registered  
6 with MIRS on August 14, 2006?

7 A And we know the amounts and that it's our borrower,  
8 yes.

9 Q Let me direct your attention to Mr. Grice's commentary  
10 on this.

11 A Just trying to clean up back here.

12 Q We're still on -- yes. We're still on 8742.

13 A I'm with you. You're referring to the Grice review  
14 response?

15 Q Yes.

16 A I see it.

17 Q So, Mr. Grice points out that the credit -- audit  
18 credit report identifies the month in which the undisclosed  
19 mortgages were opened. Do you see that?

20 A Yes.

21 Q Does he address the DataVerify report that you just  
22 testified to showing the registration date of the  
23 undisclosed mortgages on MIRS?

24 A He does in the -- his recitation of the facts regarding  
25 the loan right above that. He says that the DataVerify

1 report reflected two mortgages with a registration date of  
2 8/14/06.

3 Q Okay. So does he contest that the audit credit report  
4 and the DataVerify report contain the information that was  
5 put forward by the Trustees?

6 A He does not.

7 Q Or that, in fact, that debt existed?

8 A No.

9 Q Let's look at a post-closing undisclosed mortgage. So  
10 let me direct your attention to --

11 MR. COSENZA: Your Honor, just a clarification.

12 THE COURT: Yep.

13 MR. COSENZA: I think there's some ambiguity in  
14 the answer debt -- the fact that debt existed, I think the  
15 question is when. I think it's unclear from any of this  
16 what that means. And I'm not sure what his answer is. I  
17 mean, it's unclear.

18 THE COURT: Okay. Could you --

19 MR. COSENZA: He can cross him on it, but I just  
20 think the record is, you know, that the debt existed. I --

21 THE COURT: Okay. I think you can cross.

22 MR. COSENZA: Okay.

23 THE COURT: Take it up on cross.

24 MR. COSENZA: Thank you.

25 Q Mr. Aronoff, do you have any reasonable doubt that the

1 debt we were just talking about based on the evidence you  
2 looked at existed as of 8/14/2006?

3 A No, not based on the DataVerify report.

4 Q Thank you. Okay, let's turn to Loan 7836.

5 A Thank you.

6 MR. SHUSTER: Your Honor --

7 THE COURT: Yes.

8 MR. SHUSTER: Thank you.

9 THE COURT: Thank you.

10 Q When you're ready, please tell us, if you would, what  
11 claim is being presented with respect to this loan?

12 A So this is another misrep of debt breach finding and  
13 it's based on audit credit report under the public record  
14 searches that indicated that the borrower had four  
15 undisclosed mortgages that closed within the same months of  
16 the subject.

17 Two of them were opened in May 17 of '07 in the  
18 amounts of 368,000 and 92,000. One was opened on May 4th,  
19 2007 in the amount of 475,000 and the final undisclosed  
20 mortgage was opened on June 29th in the amount of 335,000.  
21 The subject loan closed -- or the date of the application  
22 was May 3rd, 2007.

23 Q Where are you getting that from?

24 A If we look at the loan application, I'm going by the  
25 date the loan application was signed. We can probably go

1 into the loan file and look at the note if it's in the  
2 excerpt, but if you look at the claim file, Pages 8 and 9.  
3 Page 9, you can see the signature of the borrower dated May  
4 3rd, 2007, and the application runs from Page 6 of 43  
5 through Page 10 of 43.

6 Q Okay. So then would you take us to, if you can, the  
7 evidence that the Trustees rely upon to established the  
8 addition of undisclosed debt? I think you have some charts  
9 that might help you get there if you need help. They're at  
10 TRDX-200.

11 A Right. Well, if we can go back to the application, you  
12 can see schedule of real estate loaned -- owned, if  
13 additional properties are owned, there's, you know, a spot  
14 on the application for a borrower to disclose additional  
15 property acquisitions and the debt accompanying that  
16 acquisition.

17 It's also well understood and common in the  
18 industry that whether or not a subject property has actually  
19 closed on the mortgage date, that if a borrower knows that  
20 they are acquiring properties and debt accompanying those  
21 properties, that that should be disclosed to the originator  
22 as well.

23 And that's to avoid, for example, investors from  
24 what's called stacking closings so that they appear to have  
25 no debt and then stack their closings so they get

1 increasingly more debt that closes a day later and you close  
2 a loan to a borrower who appears to have no debt and within  
3 10 days they are way over leveraged couldn't have possibly  
4 afforded the loan you just underwrote to a borrower with no  
5 debt.

6 As a result of that kind of -- to observe that  
7 kind of occurrence in the forensic loan review industry with  
8 respect to mortgage debt, the assumption is that if a  
9 mortgage on a real estate acquisition or refinance closes  
10 within 60 days of the subject loan date, it is generally  
11 picked up as an undisclosed mortgage.

12 In this review, we're more conservative and pulled  
13 that analysis back to if a loan closed in -- after the  
14 subject loan closing date but -- and within the month  
15 following the month of that closing then that was picked up  
16 as an undisclosed mortgage on the theory that given the time  
17 it takes 45, 60 days, to identify a property, negotiate a  
18 sale of a -- a purchase of a property and obtain financing  
19 for that property, that any mortgage that closed within 45  
20 days of our subject should have been known by the borrower  
21 to have -- if not existed on the loan closing date, they  
22 should've known that very shortly after the loan they were  
23 going to have significantly more debt that should have been  
24 disclosed to the lender.

25 Q And you understand that the borrower would have an

1 obligation to disclose such debt?

2 A As a lender, yes. I always wanted to know if a  
3 borrower who I'd just underwrote where a key element of it  
4 was debt to the extent the borrower in a very few days was  
5 going to obtain significantly more debt that would be  
6 critical to my understanding of the capacity of that  
7 borrower to pay and enable me to adequately assess the  
8 credit risk of that loan.

9 Q Does the borrower covenant that we looked at yesterday,  
10 I think, in Section 8 to the standard mortgage or deed of  
11 trust call for -- apply both to affirmative misstatements as  
12 well as omissions?

13 A It does refer to omissions and it refers to omissions  
14 in the loan application process or in the origination of the  
15 loan, and it doesn't limit omissions to information  
16 requested on the loan application.

17 Q Thank you. So --

18 THE COURT: Just -- so the proposed closing debt,  
19 what's the language that the borrower has -- that reflects  
20 what the borrower's misrepresentation is?

21 MR. SHUSTER: And I'll just note for you -- yes,  
22 that Section 8 --

23 THE COURT: Is that what applies?

24 MR. ARONOFF: Yeah. This is the covenant in the  
25 mortgage that would trigger a default of the no default rep.



1 We see here it says that, "The borrower shall be in default  
2 if during the loan application process, the borrower gave  
3 materially false, misleading, or inaccurate information or  
4 statements to lender or failed to provide lender with  
5 material information." That is, "Oh, I don't have it now  
6 but tomorrow I'm going have a million dollars of mortgage  
7 debt."

8 They know that given the time it takes to  
9 negotiate the purchase and sale of a piece of residential  
10 real estate and the time it takes to secure a mortgage. So  
11 we said if mortgage debt closed within the month following  
12 the month of the subject closing, we cited that as  
13 undisclosed debt which was assumed to be in the knowledge of  
14 the borrower, and cited that as a breach of this type of  
15 material information debt which would trigger a breach of  
16 the no default representation warranty.

17 THE COURT: Thank you.

18 Q Thank you.

19 A I don't think we have an example around installment, so  
20 I can talk about that for a minute.

21 Q We'll come to that.

22 A Okay.

23 Q I'll ask you about that, but I just want to close the  
24 circle on this one. Can you just direct us to the reports  
25 that you rely upon here, that the Trustees rely upon, for

1 establishing the undisclosed debts in question, and --

2 A Yes.

3 Q Yes, please.

4 A If we look at Page 15 of the claim package --

5 Q Yes.

6 A -- which is highlighted in TRDX-200, we see the top --  
7 and again, this is our borrower, probably much lower chance  
8 of confusion based on the name in this case than some other  
9 cases. The note amount of the debt that closed given the  
10 note date of 5/17/07. Right below that we have a note date  
11 of 5/4/07 in the amount of 475,000.

12 Below that, another note on a -- looks like  
13 possibly a second on the first property of 92,000 that  
14 closed on the same date as the first one. And then finally  
15 on yet a third property closed in -- this looks like it had  
16 note date the day before our loan closed on 485,000. So,  
17 you know, looking at this, it appears we have an investor  
18 who knew how to play the game here.

19 Q Okay. Would you turn to TRDX-201 and then take us  
20 quickly through? And I don't mean to rush you, but take us  
21 through that evidence, if you would.

22 A Sure. This is more corroborating information similar  
23 to what we just ran through, and you can see, I guess,  
24 they're the gray boxes on that page, but they refer to the -  
25 - I don't know if this reference is right. Okay, we can see

1 in some of the highlighted ones, you see the same properties  
2 and the same amounts on this audit credit report as well.

3 Q In any event, the audit credit report only indicated  
4 the month. It's the MIRS credit report that indicates the  
5 month and date of the loans.

6 A It gives the month, that's correct. But in this case,  
7 since our guidance was, as I said, in conforming with  
8 industry custom and practice, that if there was debt that  
9 closed in the month or the month following -- mortgage debt  
10 that closed in the month or the month following our subject  
11 that was not disclosed by some means in the file, then it  
12 was cited as undisclosed debt, particularly if it was in  
13 these large amounts.

14 Q Okay. Let's talk about installment debt. How was  
15 installment debt, as distinct from mortgage obligations,  
16 addressed in the Trustees' forensic loan review?

17 A Right. Recognizing that unlike mortgage debt,  
18 installment debt can be closed relatively quickly and one  
19 can walk into a car dealer and obtain a loan that day, the  
20 only time undisclosed mortgage debt -- I'm sorry,  
21 installment debt was cited where the debt was opened  
22 following the subject loan date was if there was an inquiry  
23 for that same debt on the borrower's credit report prior to  
24 the subject loan closing, which means the borrower should  
25 have known about it if there was an inquiry on the credit

1 report. So that was the guidance with respect to post-  
2 closing installment debt.

3 Q Thank you, sir. Let's turn to Loan 7452.

4 A Thanks.

5 THE COURT: Yep. Thank you.

6 Q When you're --

7 A Oh, we're waiting for each other.

8 Q No, thank you for your patience. When you -- if you're  
9 ready, would you please take us through the breach claim  
10 that's presented with respect (indiscernible)?

11 A Yes. So as you can see the claimant's factual basis,  
12 this is a misrepresentation of occupancy exemplar and in  
13 this case the borrower represented that they intended to  
14 occupy the subject property and based on review of  
15 bankruptcy documentation in the file, it was determined that  
16 the borrower never occupied the subject and, in fact, used  
17 it as a rental property.

18 Q Okay, so why don't we start with the loan application  
19 which is -- I think you'd be looking at Page 8 of 119 in the  
20 claim package.

21 A That's correct. So, again, the application runs three  
22 pages in this case, and we see on the first page about a  
23 third of the way down the first page the purpose of the loan  
24 to the right, "Property will be," and the box checked is  
25 primary residence.

1 MR. COSENZA: Your Honor --

2 THE COURT: Yeah.

3 MR. COSENZA: I'm just having trouble finding this  
4 one.

5 THE COURT: Yeah, I'm having trouble, too. I have  
6 the loan, but I'm --

7 MR. SHUSTER: Oh, you know, it's my -- I think I  
8 mis-referred everyone.

9 THE COURT: We're in --

10 MR. SHUSTER: Yes.

11 THE COURT: -- 7452, which is --

12 MR. SHUSTER: I think we should --

13 MR. ARONOFF: I'm on Page 8 of the claim file.

14 MR. SHUSTER: 8 of 119 in the claim file.

15 MR. ARONOFF: Correct.

16 MR. COSENZA: I have 105 in mine.

17 THE COURT: Okay, hold on. Page -- we're on Page  
18 8 of 119. Okay, that's the loan application.

19 MR. SHUSTER: I think you -- I am in the Lehman  
20 Documents Tab, it's the prior tab.

21 MR. COSENZA: Okay.

22 THE COURT: It's the penultimate tab in the  
23 binder.

24 MR. COSENZA: Sure. Yes. Got it.

25 THE COURT: Okay. And now hold on, I saw

1 (indiscernible). TRDX-204.

2 MR. COSENZA: Got it. Thank you.

3 THE COURT: Okay.

4 MR. ARONOFF: And the blowup of that page is TRDX-  
5 204. That's correct.

6 THE COURT: All right. Thank you.

7 Q So you noted that the property -- the box indicating  
8 that the property will be a primary residence is checked,  
9 and then what state is the subject property in -- which is  
10 to say, the property that's the subject of the loan?

11 A Yeah. That's where I was going to refer next. You can  
12 see the subject property, you can see the street address,  
13 you can see that it's located in Las Vegas, Nevada. And you  
14 can see a little lower down on that page that the borrower's  
15 present address is in New Jersey.

16 Q Okay. So then what evidence do the Trustees rely upon  
17 to establish a misrepresentation as to occupancy?

18 A Yeah, the primary document is, if you go to flip  
19 through the page, the claim package, you'll see starting on  
20 Page 11 is a pacer -- a printout from Pacer and the  
21 voluntary petition for bankruptcy filed in October of '07  
22 and you see on the first page of the petition which is Page  
23 12 of the claim package that -- see our borrower there and  
24 you see the borrower lists their address as what was  
25 believed to be the departure property as her present street

1 address which is the first indication that something may be  
2 awry here.

3 Q And are there other pages in the bankruptcy filing that  
4 bear on the analysis?

5 A There are. And as noted in TRDX-205 if you turn to  
6 Page 45 of the claim package which is further along in the  
7 petition you'll see a highlighted box that talks about the  
8 prior address of debtor, and they indicate that they have  
9 not moved within the past three years.

10 And just to refresh our collective recollection we  
11 can see that the loan was taken out in May of '06. This  
12 petition appears to have been filed in October of '07 and so  
13 the borrower never occupied the property based on their --  
14 the subject property based on number 15, where they have not  
15 moved in the prior three years. So they didn't move between  
16 the time they took out the loan and the filing of this  
17 petition.

18 Q Let me direct your attention to Page 28. Maybe you  
19 were getting there, but let me direct your attention to Page  
20 28 of 119.

21 A Yes.

22 Q What is that?

23 A This indicates that the borrower, in fact, did own this  
24 property with the subject debt. But it also indicates right  
25 below that that their residence is in fact still the

1 departure property.

2 Q And the Las Vegas -- sorry, the Nevada property is  
3 identified as a second property?

4 A Yes, it is.

5 Q And then finally let me direct your attention to Page  
6 40 and what does that tell you?

7 A The kind of information that would be meaningful for  
8 the purpose of trying to determine whether it was more  
9 likely than not that this borrower did not occupy the  
10 subject property as a primary residence is the employment  
11 box there where it shows that as of the date of this filing,  
12 the borrower worked in New Jersey. Kind of a difficult  
13 commute if they lived in Nevada.

14 Q Thank you.

15 MR. SHUSTER: So, Your Honor, I'm about to move  
16 off of loans onto another subject --

17 THE COURT: Okay.

18 MR. SHUSTER: -- so this might be a propitious  
19 moment for a break.

20 THE COURT: Okay. That sounds good, for a break  
21 but not for the lunch break, right?

22 MR. SHUSTER: Yes.

23 THE COURT: Okay. So let's take 10 minutes and  
24 we'll come back roughly noon.

25 MR. SHUSTER: Thank you.



1 THE COURT: Thank you.

2 (Recess)

3 THE COURT: Please have a seat.

4 MR. ARONOFF: Thank you, Your Honor.

5 THE COURT: Okay, so Mr. Shuster, what can I do to  
6 improve my real estate --

7 MR. SHUSTER: We're going to be focusing  
8 principally on Mr. Aronoff's affirmative report --

9 THE COURT: Okay. So we're going to put up --

10 MR. SHUSTER: -- which is two binders. We should  
11 be more or less done with the loan files, and we have  
12 another smaller deck to hand up as well, if we may.

13 THE COURT: Mostly on the affirmative report, you  
14 said?

15 MR. SHUSTER: Yes.

16 THE COURT: Okay.

17 MR. SHUSTER: May we --

18 THE COURT: Yes. So we're -- put away the loan  
19 exemplar deck?

20 MR. SHUSTER: I'm going to have -- I'm starting  
21 there.

22 THE COURT: Okay.

23 MR. SHUSTER: But only a couple pages in that.

24 THE COURT: Okay.

25 Q So, Mr. Aronoff, I want to direct your attention to

1 TRDX-151. It's in the first deck book.

2 A Yes.

3 Q It's very much towards the back, second to last. Can  
4 you tell us what that is, please?

5 THE COURT: I'm there, if you are.

6 A Yes.

7 Q Can you tell us what that is, please?

8 A This appears to be an excerpt with regard to a specific  
9 loan from exhibit 15 to my affirmative report.

10 Q Okay. And Exhibit 15 which is TRX-619S was produced  
11 natively. It's a Excel spreadsheet, correct?

12 A Yes.

13 Q Okay. So why don't you -- and what does -- what is  
14 identified on Exhibit 15?

15 A It was provided because I was talking about loans that  
16 were the subject of my report and Exhibit 15 is the entire  
17 compendium of the breach findings and the loans that are the  
18 subject of my report.

19 Q Okay.

20 A With some other identifying information.

21 Q So it lists each of the breaches that you present as  
22 having -- as claims on the part of the Trustees?

23 A It lists each individual breach finding that's the  
24 subject of my report.

25 Q Okay. Could we just pull up Exhibit 15, which again

1 was produced in native format, without showing the loan  
2 number column if you could, but for this loan? Is that it?  
3 So the excerpt that we have that's TRDX-151 is taken  
4 directly from this line of your Exhibit 15?

5 A Okay.

6 Q Is it? Was it? I'm asking you.

7 A I don't remember line 43,156, but they appear to line  
8 up.

9 Q Right. No, we're just not showing the loan number.

10 A Understood.

11 Q Okay. So let's go back to TRDX-151. How was -- well,  
12 how was Exhibit 15 created, Mr. Aronoff?

13 A I requested certain information that would -- from Duff  
14 and Phelps that would populate the fields that you see here.

15 Q Okay. And how did you communicate what you wanted?

16 A Probably through one of my team members at Baker Tilly  
17 who was primarily responsible for communication and data  
18 management issues with respect to our firm and Duff and  
19 Phelps.

20 Q You're saying "probably." Is that, in fact, how you  
21 did it?

22 A We did it through someone on my team. I'm just -- in  
23 terms of the specific individual, it was probably the --  
24 someone I had in mind. But yes, I did it through my team.

25 Q Was is Ms. George?

1 A It was more likely than not Shante George, yes.

2 Q Did she work with Duff under your supervision to  
3 develop Exhibit 15?

4 A Yes.

5 Q What's the source of the information in Exhibit 15:

6 A I asked for the information that had been communicated  
7 to the plan administrator pursuant to the protocol.

8 Q Okay. So the columns that are identified here on TRDX-  
9 151, would those have come from -- where would those have  
10 come from? And if you need to, you can refer to TRDX-152.

11 A Yeah, I think -- you know, it may be a different source  
12 based on the column, but up to, say, Column G that is  
13 information that would have been presented -- oh, here we  
14 have one -- in connection with a claim.

15 We can see an example of the form that was used to  
16 transmit individual loan and individual breach basis to the  
17 plan administrator pursuant to the protocol. So for every  
18 loan for which there was a claim under the protocol, there  
19 was a transmittal sheet in the form of the one we see on  
20 TRDX-115 that contained the information that was required to  
21 be submitted under the protocol to the plan administrator.

22 Q You just referred to TRDX-1 --

23 A 52, I'm sorry.

24 Q Did you mean --

25 A I meant 52.

1 Q -- TRDX-152?

2 A I did. And so this came out -- so this information is  
3 the same information that populated the breach finding, the  
4 contractual provision, the factual basis, and the  
5 materiality basis. Column H and Column J were the  
6 information that resided in Duff and Phelps' database that  
7 was collected, I believe, in Step 2 of the protocol where  
8 Column H is the plan administrator's response to the claim,  
9 and then following in Column J was the Trustees' response to  
10 the debtor's position.

11 Q So there is a row like that in your Exhibit 15 for each  
12 and every one of the breach claims that are the subject of  
13 your report?

14 A That's correct.

15 MR. SHUSTER: May I have a moment, Your Honor?

16 THE COURT: Yes.

17 Q And do you know how many rows there are in Exhibit 15  
18 for individual breach claims? I assume you don't, but --

19 A There were 116,000 or so breach claims that were the  
20 subject of my report. I don't know if that's the number of  
21 rows there were, but there should've been at least one row  
22 for each breach finding.

23 Q Can we just pull the Excel spreadsheet. I think the  
24 exhibit number, and correct me -- I think it's TRX-619.

25 Again, without the loan column, please? And if you could

1 just scroll to the bottom so we can see how many lines we're  
2 talking about --

3 A Pretty close.

4 Q Very close. 116,299 individual breach claims, yes?

5 A Yes.

6 Q Okay. So I want to go through some of the other tables  
7 and exhibits in your report. Let's start with Exhibit 1 to  
8 your report which is TRX-605.

9 THE COURT: It's in the first volume of your --

10 MR. ARONOFF: Yes.

11 THE COURT: -- affirmative report.

12 MR. SHUSTER: Thank you, Your Honor.

13 MR. ARONOFF: I'm caught up with everyone else.

14 Thank you.

15 Q Thank you, Mr. Aronoff. What is TRX-605, Exhibit 1 to  
16 your report?

17 A This was simply -- this, too, was a list of all the  
18 breach findings that were the subject of my report. But  
19 simply to identify the loan number, the trust, and the  
20 status, and I think are only three statuses of loans, maybe  
21 in this case two, rejected or accepted. There might be on  
22 hold, which was status that could be found on 15.

23 Q Yeah, this is an -- as you can see, TRX-605 --

24 A Is an excerpt.

25 Q 1,463 pages --

1 A Right.

2 Q -- this is an excerpt.

3 THE COURT: I need to catch up with where you are.  
4 Before we went to this document, we were looking at a native  
5 spreadsheet.

6 MR. SHUSTER: Yes.

7 THE COURT: And you demonstrated that Mr. Aronoff  
8 had remembered correctly that there were 116,000 --

9 MR. SHUSTER: Right.

10 THE COURT: -- claims.

11 MR. SHUSTER: Yes.

12 THE COURT: This document is now 1,463 pages  
13 presented here in truncated form.

14 MR. SHUSTER: Yes.

15 THE COURT: But if you look at Page 1,463 of  
16 1,463, the count is 76,000.

17 MR. ARONOFF: If I may, that's a loan count.

18 THE COURT: Okay.

19 MR. ARONOFF: These are loan count and the other  
20 one was breach findings.

21 THE COURT: Okay. I'm just trying to understand  
22 what I'm doing.

23 MR. SHUSTER: Yes. Yep.

24 THE COURT: Because this says, "Breach Findings."  
25 At the top it says, "Breach Findings." I suppose it also

1 help, Mr. Shuster, to note -- date each of these as to when  
2 they were -- why don't you and Mr. Cosenza come up, okay?

3 (Sidebar)

4 Q So, I just want to clarify a couple of things, Mr.  
5 Aronoff. The first -- the Exhibit TRX-602 perhaps could be  
6 more aptly titled, "All Loans With Breach Findings"?

7 A Yes, and if you look at Page 4 of the report itself  
8 under the exhibit on the table of contents, it's correctly  
9 identified as listing of all loans with breach findings --

10 Q Very good.

11 A -- and if you turn the page to Page 1 of the report  
12 which is Page 6 of 96, in context you can see that the  
13 heading that we looked at is incorrect and a typo. It's  
14 wrong.

15 And if you look at where Exhibit 1 is described --  
16 and I just had it and I just lost it. Oh, right in the very  
17 first paragraph, one, two, three, four, five lines down we  
18 talk about retain me to provide expert opinions regarding  
19 claims asserted by the Trustees in connection with the loans  
20 listed on Exhibit 1.

21 Q Very good.

22 A And it's to represent the claims for those loans.

23 Q And so we looked at Exhibit 15 which listed 116,229  
24 individual breach claims?

25 A Breach findings.



1 Q Breach findings, I should say. And those breach --  
2 those are breach findings on the roughly 76,000 loans that  
3 are identified in Exhibit 1, correct?

4 A That's correct.

5 Q Some of the loans have multiple breaches findings,  
6 correct?

7 A That's correct.

8 Q And without getting into all of the substance, you're  
9 familiar with the term withdrawn claims?

10 A Yes.

11 Q So the number of loans that you present and the claims  
12 that you present in your report and in your exhibits are net  
13 of the withdrawn claims, correct? The withdrawn claims are  
14 out by this point in time?

15 A Most of them were. There were some claims that were  
16 withdrawn after reports were exchanged.

17 Q Okay. We'll come back to that. But the lion's share?

18 A That's correct.

19 Q Okay. And the -- your report just so we're clear was  
20 issued on June 1 of this calendar year? Not a memory test,  
21 please.

22 A Yes.

23 Q So, were these exhibits intended to be accurate as of  
24 that date?

25 A Yes.

1 Q Thank you. Does the information -- coming back to  
2 Exhibit 1, does the information in columns -- is the  
3 information in Columns 2 and 3 also in the claims tracking  
4 spreadsheets -- spreadsheets that were provided by the  
5 Trustees in the protocol process?

6 A I'm going to have to refer to it because I --

7 Q Oh, please, go ahead. We're back at Exhibit 1.

8 A Right.

9 Q Which is TRX0605.

10 A No, but I want to see -- I'm not necessarily an expert  
11 on what was in the claims tracking spreadsheets. I want to  
12 look at it.

13 Q You want to look at the claims tracking spreadsheet?

14 A Yes.

15 Q That's on --

16 A 152.

17 Q Yes.

18 A Yes, there appears to be -- I mean other than count,  
19 there appears to be a loan number, the trust, and of course  
20 loan status was as of the report date.

21 Q And is the information in Column 4 of Exhibit 1  
22 rejected, accepted, or -- is that information in the  
23 rejected claims reports or the plan administrator's formal  
24 responses?

25 A Yes, that would've been based on their response to the

1 initial claims submission.

2 Q Okay. Let's look to Exhibit 3 to your report which is  
3 TRX-607. What is this document?

4 A This is simply to indicate, since I discuss it in the  
5 body of the report, for each type of breach finding the  
6 frequency with which that breach finding occurs within the  
7 population of loans that were the subject of my report.

8 Q And does the information -- all of the information on  
9 this exhibit come from Exhibit 15?

10 A Yes.

11 Q Let's look at Table 1 which is in the body of your  
12 affirmative report, but it's extracted for simplicity in the  
13 first deck which -- TRDX-207. Again, towards the back.  
14 Let's see, fourth chart from the back.

15 A Got it.

16 Q And this is following up on what you just said. So  
17 this -- what does this present?

18 A This is in tabular form, the 12 most prevalent breach  
19 findings and it should -- I should check before I say -- it  
20 should line up with the first 12 rows of Exhibit 3.

21 Q And then there are purchase price numbers. You're not  
22 opining on that purchase price numbers, correct?

23 A Absolutely not.

24 Q There's -- in fact, there's a footnote. It's in the  
25 body of your report. There's a footnote in your report,

1 Footnote 6, states at Page 3, "All purchase price  
2 information included in this report was supplied to me by  
3 the Trustees' purchase price expert, Dr. Karl N. Snow." Is  
4 that accurate?

5 A Yes.

6 Q Very good. Let's look, Mr. Aronoff, at Exhibit 4 to  
7 your report which is TRX-608. So now we're going back to  
8 the first -- going to binder --

9 MR. SHUSTER: Can someone help the witness lift  
10 these? Give him a little room?

11 Q Going back to --

12 A I don't need this anymore, I don't think. Do I need  
13 the first deck?

14 Q Not for the moment.

15 A Okay.

16 Q We're going back to the exhibits to the report. You're  
17 in the first binder of your affirmative report.

18 A 608?

19 Q Correct.

20 A (Indiscernible).

21 THE COURT: Can -- I hate to do this. Can you go  
22 back to TRDX-107?

23 MR. SHUSTER: 207?

24 THE COURT: 207, yes.

25 MR. SHUSTER: Yes. TRDX-207 --

1 THE COURT: So --

2 MR. SHUSTER: -- is in the deck that we just --

3 THE COURT: Yeah.

4 MR. SHUSTER: -- took from the witness?

5 THE COURT: It's this --

6 MR. SHUSTER: could you give it back to him,  
7 please?

8 THE COURT: It's the Table 1 summary of breach  
9 findings.

10 MR. SHUSTER: Yes. Yes.

11 MR. ARONOFF: Thank you.

12 THE COURT: What caught my eye was the footnote  
13 which says, "Many of the mortgage loans have multiple breach  
14 findings and therefore the sum of the number of affected  
15 loans and the related purchase price columns will be greater  
16 than the number of mortgage loans and the total purchase  
17 price for the claims." So does that mean that if I sum the  
18 number of affected loans and I can see doing this just at a  
19 glance it's going to be larger than 76,000 loans, right?

20 MR. ARONOFF: That's correct, Your Honor. The  
21 footnote was a direction. Don't add these columns as you'd  
22 normally do.

23 Q And the purchase price number, Mr. Aronoff? The  
24 aggregate purchase price number will also --

25 A Will be overstated as well.

1 THE COURT: And how would I be able to tell how  
2 the overlap works?

3 MR. SHUSTER: So actually in the deck --

4 THE COURT: Is this coming attractions?

5 MR. SHUSTER: No, well -- now's a good time to do  
6 it, so let's do it. It'd TRDX-208, it's the next chart.

7 MR. ARONOFF: I think the answer you're looking  
8 for, Your Honor, is by reference to Exhibit 15.

9 Q So just to elicit the testimony, you can sort on  
10 exhibit -- using Exhibit 15 by loan. Loans that are  
11 presented with breaches and so you would -- you could just  
12 sort individual loans and then you'd get to the total number  
13 of loans in any -- that have breaches, correct?

14 A Yes, and --

15 Q And also any loan in any -- go ahead.

16 A Yes. We provided the number of loans in Exhibit 1 that  
17 were the subject of the report. We provided all of those  
18 loans and all of the individual breach findings in Exhibit  
19 15 in an Excel spreadsheet.

20 So by sorting the data in Exhibit 15, you can  
21 create the frequency of breach finding for each and every  
22 loan and can create a chart of how many loans have one, how  
23 many loans have two, how many loans have three, and like.  
24 But because there are so many different types of breach  
25 finding, it gets complicated. It gets difficult to do

1 intuitively, and so I prepared what I call the dot chart to  
2 explain by controlling for four different misrepresentations  
3 how you could do the analysis.

4 Q Okay, so TRDX-208 may be self-explanatory to the Court,  
5 is wasn't to me. So please walk us through it if you would.

6 THE COURT: I think I get it, but I think --

7 MR. SHUSTER: Okay.

8 THE COURT: -- we need to make a record.

9 MR. SHUSTER: Yes. Thank you, Your Honor.

10 A Okay. So, to the extent we wanted to see what the  
11 actual number of loans -- if we wanted to isolate loans with  
12 multiple breaches and just control for misrep of income, we  
13 can see that by looking at the dot under misrep of income in  
14 the one breach per loan category, there are 21,311 loans  
15 with one breach and the sole breach is a misrep of income.

16 If we want to see how many of misrepresentation of  
17 income loans have two breaches of these four, we can see  
18 that 3,397 loans have a misrep of income breach and a misrep  
19 of debt breach. We can see that 1,411 loans have a misrep  
20 of income breach with a second breach that is misrep of  
21 occupancy and we can see that the last set of  
22 misrepresentation of income breached loans with two breaches  
23 it is 5,564 and those loans contain a misrep of income  
24 breach and an excessive DTI breach, and so on.

25 We can do it with a three and we have a number of

1 misrep of income breach with two other breaches. There are  
2 534 where the two other breaches are debt and occupancy.  
3 For misrep of income breach that has debt and excessive DTI,  
4 there are 1,206 and for a misrep of income breached loan  
5 with two other breaches that are occupancy and DTI, there  
6 are 170. And then of the misrep of income breaches that  
7 have all four of these there are 246.

8 And hopefully if you go to the right and add up  
9 all the values in the columns where there's a dot under  
10 misrep of income, that better be 34,323. But I think it  
11 does. So that would be a way of showing that of the four  
12 breach findings here, the frequency of that type of breach  
13 for each loan.

14 Q Thank you. And it works the same way for the other  
15 breach categories?

16 A Correct.

17 THE COURT: Can I ask a followup question?

18 MR. SHUSTER: Of course.

19 THE COURT: So, that was perfect. Thank you. My  
20 question is, there are 34,323 loans that this chart and you  
21 say have misrepresentation breaches. They can be sorted  
22 into these other buckets based on different colored dots as  
23 to whether or not that's a one breach -- it's the only  
24 breach on a loan or whether it's accompanied by other  
25 breaches, right?



1 MR. ARONOFF: Yes.

2 THE COURT: Okay. And that's the first column.  
3 That's reflected in the first column, right?

4 MR. ARONOFF: That's correct.

5 THE COURT: Now, so there are 34,000-odd loans  
6 that have misrepresentation of income breaches but there  
7 only 11,000-odd loans that have excessive DTI and there are  
8 23,000 loans that have misrepresentation of debt breaches  
9 but there are only 11,000-odd loans that have excessive DTI.  
10 So intuitively it seems that there are some  
11 misrepresentation of income breaches and/or some  
12 misrepresentation of debt breaches either together or  
13 separately that don't trip the DTI (indiscernible)?

14 MR. ARONOFF: That's correct, Your Honor.

15 THE COURT: Okay. Thank you. So that means --  
16 one followup only -- is that notwithstanding that a borrower  
17 may have misrepresented his or her income, it could  
18 arithmetically not have tripped the DTI but nonetheless led  
19 to a finding that it was -- that it caused an adverse  
20 material effect on the loan? You could have a income breach  
21 without a DTI breach that nonetheless leads you to the  
22 conclusion of AMA?

23 MR. ARONOFF: That's correct. And many cases the  
24 absence of a DTI breach would be because of the absence of  
25 an excessive DTI rep and warranty.

1 THE COURT: Very good. Thank you.

2 Q Okay, Mr. Aronoff. Let's turn to Exhibit 4 to your  
3 report which is TRX-608. What is this intended to convey?

4 A This is the -- all the data and information regarding  
5 the misrep of income breach findings that I discuss in my  
6 report. And I discuss in various parts of the affirmative  
7 report the type of evidence. I discuss the variances. And  
8 so this is an exhibit which contains, for each  
9 misrepresentation of income breach finding, all of the  
10 information that's the subject of a column heading.

11 Q And was this exhibit, like Exhibit 15, created at your  
12 request by someone on your team working under your direction  
13 and supervision with Duff and Phelps?

14 A That's correct.

15 Q Is that true for all the exhibits to your report?

16 A It is.

17 Q Thank you. As well as the tables and figures in your  
18 report?

19 A Yes, that's correct.

20 Q So is all of the information, but for the median -- you  
21 see the median row at the top between the blue shaded row  
22 and then the numbered rows?

23 A I do.

24 Q Is all of the information in this but for that and but  
25 for the fifth and sixth columns taken from Exhibit 15?

1 A The fifth and -- I don't know if the -- I don't know --  
2 not taken from Exhibit 15.

3 Q Taken from the claim package?

4 A The same data that I referred to before that was the  
5 basis for Exhibit 15. Information that had been provided to  
6 the plan administrator pursuant to the protocol deliveries -  
7 - the claim package.

8 Q And then those columns -- the monthly nominal  
9 difference and monthly percentage difference -- are those  
10 merely computations based on the other information that's  
11 set forth in the chart?

12 A That's correct.

13 Q And this was -- was this provided in Excel format  
14 together with your report?

15 A It was.

16 Q And is that true -- well, that's true for all of the  
17 exhibits, is it?

18 A Slightly different information, but the same source of  
19 data and the same provision in Excel that would allow any  
20 recipient to check the math and re-sort the data in the same  
21 way.

22 Q Okay.

23 MR. SHUSTER: Your Honor, may I have a moment?

24 THE COURT: Sure.

25 MR. SHUSTER: Thank you.

1 Q Now, to the extent that the information on TRX-608 is  
2 drawn from a source other than Exhibit 15, and you mentioned  
3 the claims packages, what did you do to satisfy yourself  
4 concerning the accuracy of that information?

5 A Well, we were provided with information in the form  
6 we've seen it on those large spreadsheets with data and  
7 narratives and responses as well is the claim files and the  
8 loan files.

9 So -- and we were given an initial, for lack of a  
10 better term, data dump of all the loans that were the  
11 subject of the report and so in preparing the exhibits we  
12 did, taking into account the enormous size of data that was  
13 here, we did spot checks and audits -- not in a formal audit  
14 but necessary to satisfy me that the data was accurate.

15 So we didn't look at every line, we didn't look at  
16 every cell. I work at an accounting firm, so we're very  
17 cautious when I use the word audit because I'm not an  
18 accountant and I use the (indiscernible), but understanding  
19 that this was the exposition of the information and data on  
20 which I relied to provide my expert opinions, I took as much  
21 care as we possibly could to assure that the data was  
22 accurate and matched what we had been provided originally.

23 Q Okay. Let's look at TRDX-213 which is in the new deck.  
24 Are you with me?

25 A Yes.

1 Q So you see that's a line extract from your Exhibit 4  
2 and then a extract from the claim tracking spreadsheet for  
3 the same loan?

4 A Yes.

5 Q So the information that's in the Columns C, B, and G  
6 and Exhibit 4 are taken from the claims tracking  
7 spreadsheet?

8 A Yes, I see that.

9 Q Incidentally, looking at the description in the claims  
10 tracking spreadsheet, it says, "The 2007 tax returns confirm  
11 the borrower's actual income for 2007 was 1,922 per month or  
12 \$23,064 annually." Do you see that?

13 A I do.

14 Q So yesterday you testified you weren't attempting  
15 conclusively to prove the borrower's actual income, but is  
16 it your opinion that it is more likely than not that it is  
17 the actual income number that's presented here in the claim  
18 tracking spreadsheet?

19 MR. COSENZA: Just --

20 THE COURT: Hold on.

21 MR. COSENZA: Objection.

22 THE COURT: Yes.

23 MR. COSENZA: Leading.

24 THE COURT: That's fair. Ask it a different way,  
25 please, Mr. Shuster.

1 Q What is the number -- what are you referring to -- what  
2 do you mean to convey when you say here, "The  
3 (indiscernible) tax returns confirm the borrower's actual  
4 income for 2007 was \$1,922 per month"?

5 A The actual income is intended to represent the income  
6 number for that borrower that was derived from the forensic  
7 loan review of the file that was compared to the represented  
8 income to make a determination as to whether or not there  
9 was a breach finding.

10 Q And is it your opinion as to this actual income number  
11 that was presented and the others that were presented that  
12 it's more likely than not that that rather than the  
13 represented number was the actual income number for the  
14 borrower?

15 MR. COSENZA: Same objection. Leading. I mean,  
16 we're -- the horse is like out of the barn on this, so --

17 THE COURT: Yeah. Sure. Come on up.

18 (Sidebar)

19 THE COURT: Mr. Aronoff, if you recall the  
20 question please answer it. If not, Mr. Shuster will repeat  
21 it yet again.

22 MR. ARONOFF: I'm sorry, can I ask you to repeat  
23 it again? I think I know what it is, but I want to be  
24 absolutely sure.

25 THE COURT: Sure.

1 Q Is it your opinion as to this actual income number and  
2 the others that were presented, that it's more likely than  
3 not that that number rather than the number represented on  
4 the loan application was the actual income for the borrower?

5 A Let me be clear about answering this. As I discussed  
6 yesterday, the purpose of the forensic loan review with  
7 respect to income was not to verify the actual income of the  
8 borrower, but it was to make a determination whether it was  
9 more likely than not that the stated income was  
10 misrepresented.

11 So without getting too pedantic about the mean of  
12 actual, this column was intended to designate the income  
13 number that it was believed more accurately reflected the  
14 borrower's income as opposed to the stated income and in  
15 that was our belief and my understanding, the understanding  
16 of the loan reviewer subject to our guidance as to how these  
17 reviews would be done, how this analysis would be done.

18 It was also used -- that actual income number was  
19 also used as the basis for assessing what the variance would  
20 be. Because remember we had the 5 percent variance test.  
21 So to the extent the income believed to be more likely the  
22 case than not based on the evidence in the file when  
23 compared to the stated income if the variance was less than  
24 5 percent, no claim, and there were some other tests in my  
25 report where the variances were larger for certain

1 categories of borrowers and if they were below that no claim  
2 would've been presented.

3 So, I think the answer to my question is yes, but  
4 I needed to qualify it in that manner.

5 Q Thank you, Mr. Aronoff.

6 THE COURT: Okay. I think this is probably a good  
7 time to stop and break for lunch, so -- and then roughly  
8 speaking, to your finish line, Mr. Shuster --

9 MR. SHUSTER: I hope under an hour.

10 THE COURT: Okay. Great.

11 MR. COSENZA: We'll be ready to start with --

12 THE COURT: You'll be ready to start promptly.

13 Okay, then why don't we come back just shy of 2:00 and we'll  
14 take it from there. Thank you very much.

15 MR. COSENZA: Thank you, Your Honor. Have a good  
16 lunch.

17 (Recess)

18 THE COURT: Ready.

19 CONT. DIRECT EXAMINATION OF JAMES ARONOF

20 BY MR. SHUSTER:

21 Q Mr. Aronoff, we've been looking at Exhibit 4 and the  
22 information on what it's based on. Would you turn to Figure  
23 1 in your affirmative report, which is on Page 45 of your  
24 report or Page 50 of the exhibit. TRX-601.

25 A Okay.



1 Q And if you'd keep -- if you can keep TRDX-213 in front  
2 of you so you have -- you have Exhibit 4 of your report in  
3 mind as well. It's the first page in the new deck. Are you  
4 with me?

5 A 213?

6 Q Yeah.

7 A Yes.

8 Q Okay. So is Figure 1 a summary of the  
9 misrepresentation breach claims in Exhibit 4?

10 A It's a summary -- well, it's derived -- it comes from  
11 Column G and it shows the frequency with which each type of  
12 evidence or supporting documentation was the primary source  
13 of support for each of the 34,000 misrepresentation of  
14 income breach findings.

15 Q Very good. And that's the -- some of what you just  
16 said is in the substance of Footnote 63?

17 A With respect to this chart and the other ones that  
18 follow, yes.

19 Q And then can you tell us what Figure 2 is, please?

20 A Figure 2 is a bar chart that indicates the frequency  
21 with which each income variance occurs within a bucketed  
22 percentage of variance.

23 Q And is that a summary of the monthly percentage  
24 difference data listed in Exhibit 4?

25 A That's correct.

1 Q That would be Column F in Arnoff Exhibit 4?

2 A That's correct.

3 Q Okay. Thank you. Let's look at Arnoff Exhibit 5 and  
4 that would be -- the demonstrative would be TRDX-215. And  
5 then the exhibit itself is TRX-609. But why don't you start  
6 with TRX-609 and tell us what that is.

7 A Okay. Again, as I said with respect to Exhibit 4, I  
8 discussed, with respect to misrepresentation of debt breach  
9 findings in the body of the report, certain types of  
10 evidence that were used, excuse me. And so this is an  
11 individual listing, excuse me, of each misrep of debt  
12 breaching finding and provides certain statistical  
13 information about that. The number of undisclosed debts per  
14 breach finding, the evidence types that were cited or that  
15 were available to support that. And then to the extent  
16 there were other breach findings on that loan, it lists  
17 those as well.

18 Q And as with Exhibit 4, does the information in Exhibit  
19 5 come from the claim tracking spreadsheet or other  
20 materials exchanged during the protocol process?

21 A That's correct.

22 Q And let me just -- just so we walk through, there's a  
23 total -- if we're looking at the demonstrative, 215, TRDX-  
24 215, sir?

25 A Yes, I'm with you.

1 Q So there's a total undisclosed debt number there. And  
2 then the description in the claim tracking spreadsheet  
3 refers to undisclosed monthly payments of 24,000; do you see  
4 that?

5 A I do.

6 Q So let me direct your attention two pages forward in  
7 what we're referring to as a paging anomaly. And let -- you  
8 saw -- so let me direct your attention to the --

9 THE COURT: Is that the anomaly, that your pages  
10 are actually in order?

11 MR. SHUSTER: They are. Well, that might be  
12 anomalous at this point.

13 Q But it's two pages forward and it's the second page for  
14 Exhibit 5 for the same loan number 7711. Are you with me?  
15 So you have to skip over Exhibit 5 pages for 1672 and get to  
16 the Exhibit 5 page for 7711, which is TRDX-218. You with  
17 me?

18 A Yes, I am. Surprisingly I am.

19 Q Okay. So -- you are and you have been. Okay.

20 THE COURT: Now, I'm allowed to pick on him,  
21 you're not, Mr. Arnoff.

22 MR. ARONOFF: No, it's I'm surprised there. He --  
23 his instructions were fine.

24 MR. SHUSTER: That makes it --

25 Q Okay. So in the red box, are those the undisclosed

1 debts that add up to the total undisclosed debt number

2 that's reflected in Exhibit 5 for that loan?

3 A I -- it looks like it. I haven't done the math, but --

4 Q Yeah.

5 A -- assuming this is the claim package extract --

6 Q Right.

7 A -- that would be where those debts could be summed and,  
8 you know, counted to see if there were 11.

9 Q Right. So -- and that was my next question that that  
10 information, the information that leads up to the aggregate  
11 total undisclosed debt number, that was provided in the  
12 claim package?

13 A Yes.

14 Q And as with Arnoff Exhibit 4, that's true for all of  
15 the line items in Arnoff Exhibit 5, comes from the claims  
16 training spreadsheet, the claim package or Exhibit 15?

17 A Or the loan file.

18 Q Thank you. Let me -- let's -- and again, what did --  
19 was Exhibit 5, as you described with Exhibit 4, and I think  
20 you said that was true for all the exhibits, but for Exhibit  
21 5, was that prepared by your team working under your  
22 direction and supervision with Duff & Phelps?

23 A Yes.

24 Q And that's true for all the exhibits in your report,  
25 and figures and tables? I think I asked you this, but

1 forgive me.

2 A Yes.

3 Q And what did you do to satisfy yourself as to the  
4 accuracy of the information in Arnoff Exhibit 5?

5 A Similarly we compared the information in any one of the  
6 number of exhibits to the data that we had regarding all of  
7 the information that had been exchanged.

8 Q And is that true for all the exhibits and figures and  
9 tables in your report?

10 A Yes.

11 Q Can you turn, Mr. Aronoff, to --

12 THE COURT: Can -- before you turn that page --

13 MR. SHUSTER: Please.

14 THE COURT: -- can I just -- I might have missed  
15 it, the grab that you have --

16 MR. ARONOFF: Okay.

17 THE COURT: -- on TRDX-218, the grab from the  
18 claim package, do you see at the top it says, Rental  
19 Worksheet 5/8/2015? In the bottom box where you list all  
20 the debts, yeah, right there. Right -- see, it says Rental  
21 Worksheet, the heading?

22 MR. ARONOFF: Yes, I see it.

23 THE COURT: Does everyone -- do you see that?

24 MR. ARONOFF: Yes.

25 THE COURT: I'm waiting for Mr. Shuster.

1 MR. SHUSTER: Yes. No, I'm with --

2 THE COURT: Oh, yeah.

3 MR. SHUSTER: -- you, Your Honor. Thank you.

4 THE COURT: I'm just -- my question is what's this  
5 a grab of? This thing that I mean looking at on the bottom,  
6 what's that a grab from?

7 MR. ARONOFF: I mean --

8 THE COURT: And when I say grab, I mean like a --

9 MR. ARONOFF: Yeah, yeah, it's -- without putting  
10 it in context, all I know is it appears to be a grab from a  
11 document in the claim package for this loan where the  
12 undisclosed debt --

13 THE COURT: Was listed?

14 MR. ARONOFF: -- of the borrower was listed in  
15 relation to properties that they may -- there may have been  
16 rental income associated with. I just don't know.

17 THE COURT: Okay. Okay. Thank you.

18 Q I'm pretty sure I got this, but I'll ask it again.  
19 Just to make clear, I think you testified to this, but were  
20 all the exhibits attached to your report produced to the  
21 plan administrator in Excel format?

22 A Yes.

23 Q Okay. Let's look at going back to the text of the  
24 actual report itself, if we could. And I want to find  
25 Exhibit 5. That -- not Exhibit 5, forgive me, Figure 3,

1 which is on Page 54. It's on numbered Page 54 of the report  
2 which is Page 59 of TRX-601. Sorry, go to Page -- forgive  
3 me. Let's go to Page 56, breach findings based on total  
4 (indiscernible) debt balances.

5 A I'm there.

6 Q So what is that meant to convey?

7 A For the population of misrepresentation of debt breach  
8 findings, the bars indicate the frequency with which a  
9 breach finding exists within the bracketed dollar amounts.  
10 So for example, if we look at the column that says 80,001 to  
11 160,000 that means that there are 3,512 breach findings that  
12 exist in that range.

13 Q And is the information that's used to populate that  
14 figure derived from the undisclosed debt balance data in  
15 your Exhibit 5?

16 A That's correct.

17 Q So I now want to cover Exhibit 7, which is TRDX-221 in  
18 the deck. And then it's TRX-611, which is Exhibit 7 to your  
19 report.

20 A Okay.

21 Q Again, is -- does all of the information in Exhibit 7  
22 come from Exhibit 15 or the other materials you've  
23 described, claims tracking spreadsheet, claims package or in  
24 some instances the loan file?

25 A Yes.

1 Q And now let's look at Figure 7, which is at Page 69 of  
2 your report. When you're ready, please tell us what Figure  
3 7 is meant to convey.

4 A For the loans that contain a misrepresentation of  
5 occupancy breach finding, this is a chart that shows the  
6 frequency with which each type of supporting documentation  
7 was the primary support for each one of those breach  
8 findings?

9 Q Those -- is it a summary of information that appears in  
10 Exhibit 7 as well as Exhibit 15 and the claims tracking  
11 spreadsheet?

12 A It's -- as noted in the footnote, it's a summary of the  
13 information in Exhibit 7, which in part was derived from 15.  
14 So, yes.

15 Q Okay. Let's look at Aronoff Exhibit 8, which is TRDX-  
16 223, which is TRX-612. TRX-612 is Exhibit 8 to your  
17 affirmative report?

18 A Yes, it is.

19 Q Does all the information but for the information in the  
20 DTI threshold and threshold exceeded by columns appear on  
21 the claim tracking spreadsheets? And you have an example in  
22 TRDX-223.

23 A I'm sorry, what was the first column you referenced in  
24 your question?

25 Q The DTI threshold.



1 A Well DTI threshold would have come from the reference  
2 to the appropriate rep and warranty, so that would come from  
3 15 as well. If you looked at the rep and warranty that was  
4 referenced there to see it provided a maximum DTI  
5 requirement. But yes, the only calculated field that would  
6 not have been in the information that was exchanged, would  
7 be the threshold exceed by.

8 Q And otherwise the information comes from Exhibit 15 or  
9 the other sources you've identified?

10 A That's correct.

11 Q Let us look at Figure 8 in the body of your affirmative  
12 report, which appears at Page 73 of the report.

13 A Yes.

14 Q Which is, just for the record, Page 78 of TRX-601 and  
15 what is that intended to convey?

16 A Again, for the 11,399 excessive DTI breach findings  
17 that are the subject of the report, it intends to show the  
18 frequency with which certainly supporting documentation was  
19 cited to support those breach findings.

20 Q And what's the source of the information?

21 A The exhibit we just looked at.

22 Q Would you please turn to Page 75 of your report? Page  
23 80 of TRX-601. What does that show?

24 A For the DTI -- excessive DTI Mr. -- excessive DTI  
25 breach findings, it shows how many times a breach finding

1 was in the four ranges that are identified.

2 Q And what's the source of that information? Is it  
3 Exhibit 15 and the other -- and the claims tracking  
4 spreadsheet?

5 A Directly it was created from Exhibit 8, which had the  
6 sources we discussed.

7 Q I want to skip to Exhibit 17, which is, in the deck  
8 would be TRDX-234. You have to skip ahead a number of pages  
9 to get there. What is Exhibit 17?

10 A Is it in this Line 2 Binder? Can I look at it?

11 Q Yes, it's Volume 2, please. And I'm sorry.

12 A Okay.

13 Q It's Volume 2, Mr. Aronoff, TRX -- the tab TRX-621,  
14 that's the exhibits.

15 A Um hmm. Okay. This is a list of -- I know it's an  
16 excerpt, but this was meant to show the information with  
17 respect to misrepresentation of income breach findings  
18 that's listed in the header columns to allow a comparison of  
19 those features with respect to loans that had been accepted  
20 by the plan administrator pursuant to the protocol, and  
21 those misrepresentation of income breach finding  
22 characteristics with respect to loans that were still in  
23 dispute. And this helped to support the data by which I, in  
24 the body of the report, discussed that topic.

25 Q What is the source of the information in Exhibit 17?

1 A Again, except for the calculated monthly percentage  
2 difference field, it was the same data sources that we  
3 discussed previously.

4 THE COURT: Can I -- I need to stop so I'll make  
5 sure I understand this. So the slide that I'm looking at  
6 are lists of loans with breaches that the plan administrator  
7 accepted?

8 MR. ARONOFF: The red ones are accepted.

9 THE COURT: Red ones? So up on the screen here  
10 they're all red, right? So these are all -- so Aronoff  
11 Exhibit 17 is a loan -- is a claim loan that was accepted by  
12 the plan administrator, right?

13 MR. SHUSTER: That -- there is --

14 MR. ARONOFF: Yes. And then if you go to the --

15 THE COURT: In TRDX-233 is a description of loan  
16 ending in, I can't tell if that's Q114 or 0114, right? And  
17 that's the top loan on TRX-621, borrower, self-employed  
18 monthly income 35,000 versus monthly income according to  
19 (indiscernible) 29,000, right? No?

20 MR. ARONOFF: I'm not on the same line as you.  
21 I'm sorry.

22 Q If you look at -- you may be, Mr. Aronoff, if you were  
23 looking at TRX-233, and I may have directed you to 234.

24 A You did. Okay.

25 THE COURT: It's TRDX-233.

1 MR. SHUSTER: DX-233. My apologizes?

2 THE COURT: Right?

3 Q If you look at TRDX-233 --

4 A I'm --

5 Q -- you can see Her Honor is referencing Loan 0114 which  
6 is an extract from Exhibit 17, TRX-621, and is the loan  
7 that's identified on Line 1 of the exhibit, correct?

8 A Yes.

9 THE COURT: Okay. And my question is that -- I'm  
10 just trying to follow what the point of this is. You -- the  
11 question was something relating to that -- well the title  
12 says it rejected misrepresentation of income breach findings  
13 with the same characteristics as accepted misrepresentation  
14 of income breach findings. So the slide that I'm looking at  
15 is all accepted ones?

16 MR. ARONOFF: That --

17 THE COURT: So what -- I don't -- I'm having a  
18 hard time matching the title to anything.

19 MR. SHUSTER: Mr. --

20 MR. ARONOFF: I understand, Your Honor.

21 THE COURT: Okay.

22 MR. ARONOFF: If I can explain it?

23 THE COURT: Well, let --

24 MR. SHUSTER: Please.

25 THE COURT: You want to ask a question?

1 Q Would you take us through TRX-621, Mr. Aronoff,  
2 sufficiently to explain what Exhibit 621 shows and how it  
3 does show?

4 A Yes. If you turn to Page 8 of 863 in that exhibit, you  
5 can see the end of the 199 accepted loans and the beginning  
6 of all of the rejected loans that follow, that constitute  
7 the rest of the 863 pages. So the accepted loans were  
8 listed first, and that would allow anyone with this Excel  
9 spreadsheet to sort by any of these categories to compare  
10 accepted loans with rejected loans.

11 So this included both the accepted -- you can't  
12 tell from the first page because it's all accepted, but this  
13 -- the entire exhibit included all the accepted and rejected  
14 loans that were the subject of the report and would allow  
15 you to sort and filter Excel to compare any subset of those  
16 accepted or rejected loans with respect to misrepresentation  
17 of income.

18 THE COURT: Okay. So stated differently, though,  
19 what you're saying is that I have a pile of loans and I can  
20 fish out from the pile an accepted loan and a rejected loan.  
21 And I can find an accepted loan that has a misrepresentation  
22 of income of 20 percent based on a tax return, and I can  
23 find a rejected loan that has a misrepresentation income of  
24 20 percent based on a tax return?

25 MR. ARONOFF: And attempt to see if there is any

1 discernible difference as to why it was accepted or not  
2 accepted.

3 THE COURT: Okay. But this chart, all it does is  
4 sort -- it doesn't do that -- it doesn't do that, it just  
5 collects them; is that right?

6 MR. ARONOFF: That's correct, Your Honor. This  
7 provided the data that would enable, that enabled me and  
8 enable -- and would enable the plan administrator to sort  
9 the Excel spreadsheet in which this exhibit was provided to  
10 engage in the --

11 THE COURT: Okay.

12 MR. ARONOFF: -- analysis you just described.

13 THE COURT: Okay.

14 Q And just to be clear, you offer an opinion in your  
15 report, do you not, that the loans that are identified on  
16 Exhibit 17, as having been rejected, do in fact share common  
17 characteristics with the loans identified on Exhibit 17 as  
18 having been accepted?

19 A I'd offer that observation.

20 Q That's why you're setting them forth in Exhibit 17 to  
21 begin with?

22 A That's correct. There's discussion about my inability  
23 to discern meaningful differences in different categories,  
24 and so I provided the data that would enable anyone reading  
25 the report, who has the Excel spreadsheet, to check my

1 analysis and see if they disagree based on the same basis  
2 for which I made my opinion -- my observations.

3 Q And is --

4 THE COURT: But, I'm sorry. But without actually  
5 looking at the files, I can't tell whether there's a  
6 meaningful difference or not, right? You're telling me that  
7 your expert opinion is that there is no difference between a  
8 loan with characteristics one through five that is accepted,  
9 and a loan with characteristics one through five that is  
10 rejected?

11 MR. ARONOFF: Simply based on looking at these  
12 data points. I've -- I'm -- so to the extent someone's  
13 saying, you can't use tax returns ever, and we have a number  
14 of incidents of misrep of income breach findings that are  
15 based on tax returns that we call into question whether that  
16 was true for those loans.

17 THE COURT: But the fact that -- okay.

18 MR. ARONOFF: It's not making a final  
19 determination. I agree with you, you have to refer, as  
20 we've said, to the totality of the file on each loan to make  
21 the ultimate determination.

22 THE COURT: Thank you.

23 Q Mr. Arnoff, please turn to Exhibit 18 in your expert  
24 report, which is TRX-622.

25 A Yes, I'm there.

1 Q So again, this is -- well why don't you describe  
2 (indiscernible).

3 A Similar to the prior exhibit, this was an exhibit on a  
4 breach finding by breach finding basis that would enable one  
5 to compare the statistics cited in the spreadsheet between  
6 rejected misrep of debt breach findings and accepted misrep  
7 of debt breach findings.

8 Q And again, what you did is you looked at certain  
9 characteristics of accepted loans and you looked at certain  
10 characteristics of rejected loans. And the rejected loans  
11 on which you made a finding there was a breach, right?

12 A Yes.

13 Q And you concluded that in your opinion, based on your  
14 expertise you cannot distinguish between the accepted and  
15 rejected loans, at least as to these -- the characteristics  
16 you identify here?

17 A Based on these characteristics -- the observation of  
18 these characteristics only, that's correct.

19 Q And was TRX-622 -- going back to TRX-621 and for that  
20 exhibit, 622, 623 and 624, did what you say earlier about  
21 the preparation and the exhibits of your reports apply here  
22 too?

23 A Yes, all the same database, all the same, you know,  
24 team working with Duff and all the same careful  
25 consideration to try and avoid error.



1 MR. SHUSTER: Okay. Your Honor, may I have a  
2 couple of minutes?

3 THE COURT: Of course.

4 MR. SHUSTER: Five minutes (indiscernible).

5 THE COURT: Okay. I might, if you don't mind, I  
6 might stay put.

7 MR. SHUSTER: Of course.

8 (Pause)

9 MR. SHUSTER: Your Honor, that concludes the  
10 Trustees' direct examination of Mr. Aronoff.

11 THE COURT: Congratulations, Mr. Shuster.

12 MR. SHUSTER: Thank you.

13 THE COURT: Okay. So are you folks ready?

14 MR. DAVIS: Yeah.

15 THE COURT: Who am I going to --

16 MR. DAVIS: I mean, we could take a few minutes.  
17 I'm going to do it. If you want to take a few minutes, we  
18 can --

19 THE COURT: Sure. You're going to --

20 MR. DAVIS: -- get our binders up and circulated.

21 THE COURT: -- go first, Mr. Davis? Okay. So  
22 just help Mr. Aronoff, in terms of his binder situation. If  
23 you're going to go back to all of these binders or have new  
24 binders, let's just get him set up. All right?

25 MR. DAVIS: We have a new set of binders.

1 THE COURT: I'm delighted. So let's -- why don't  
2 we take a good ten minutes to get established and if it  
3 helps the restroom through the door is available.

4 (Recess)

5 THE COURT: Please, have a seat. There's a lot of  
6 books.

7 MR. DAVIS: A lot of books. We're going to try to  
8 move quickly, though, Your Honor.

9 THE COURT: Okay. I'm ready if you --

10 MR. DAVIS: All right.

11 THE COURT: -- or do you want to wait for the  
12 books?

13 MR. DAVIS: We do have to pass out the books, I  
14 think.

15 MR. ARONOFF: Thank you so much.

16 (Counsel confer)

17 THE COURT: Okay. I'm ready when you are, Mr.  
18 Davis.

19 CROSS EXAMINATION OF JAMES ARONOFF

20 BY MR. DAVIS:

21 Q Good afternoon, Mr. Aronoff.

22 A Good afternoon.

23 Q Mr. Aronoff, you don't know if you reviewed any loan  
24 file in its entirety in preparation to this case, correct?

25 A That's correct.

1 Q And yet you offered an expert opinion in your opening  
2 report in this case that every single one of the 76,044  
3 loans that are the subject of your report had one or more  
4 breaches of representations and warranties made by Lehman;  
5 is that correct?

6 A Yes.

7 Q And you also offered an opinion that as to each of  
8 these breach claims, on every one of those loans the AMA  
9 requirement was satisfied; is that right?

10 A Yes.

11 Q And you didn't qualify that in your reports of any kind  
12 of error rate; is that correct?

13 A That's correct.

14 Q So on the 76,044 loans that were the subject of the  
15 opening report, your breach rate was a hundred percent when  
16 you issued your report; is that correct?

17 A All of the loans on which I offered an opinion were  
18 found to have breaches, but not all of the loans that were  
19 reviewed, pursuant to the forensic loan review, contained  
20 breaches.

21 Q Okay. Let's take a look at TRDX-163.

22 A Which binder is that in?

23 Q You'll see it on the screen, actually. I believe it's  
24 Tab 8 of your small binder, if you want to see it. I'm not  
25 going to dwell on it long.

1 A Okay.

2 Q Do you want to see it?

3 A No. I --

4 Q So this is the summary of opinions that you put up in  
5 the beginning of your testimony the other day, correct?

6 A Yes.

7 Q So even though this summary of opinions seems to repeat  
8 the opinion we just discussed, I think you softened that  
9 position a little bit and you said you agreed with Mr. Grice  
10 on about 30 loans; do you remember that?

11 A I agreed that his analysis, upon further review of the  
12 -- I agreed that the loans contained, in some cases, the  
13 errors that were identified by Mr. Grice in his analysis.

14 Q Okay. So you now agree that the loan population that  
15 you looked at does not have a hundred percent  
16 (indiscernible); is that right?

17 A Not necessarily.

18 Q You disagree with that?

19 A The assessment was made with respect to particular  
20 breach findings so that if I agree that a particular breach  
21 finding contained a mistake, and that loan had other breach  
22 findings, that loan would not have been removed from the  
23 population, only the breach finding would have been removed  
24 from the population.

25 Q So you don't recall that as to about 65 of these loans

1 you agreed there was no valid breach anymore after reviewing  
2 Mr. Grice's work?

3 A I don't recall that number. I thought it was about  
4 half of that.

5 Q Okay. But you do recall that for some number of loans  
6 you now agree there is now no valid breach, correct?

7 A I agree that the -- with respect to those loans that  
8 there was a mistake made in the process with respect to the  
9 threshold fact that was the basis for that breach. And  
10 since that fact was incorrectly identified as the basis for  
11 the breach, the breach finding, and therefore the breach, no  
12 longer existed.

13 Q So are you saying there still may be breaches on those  
14 loans?

15 A If there are, they weren't identified or claimed in the  
16 process and they weren't the subject of my report.

17 Q Now since you submitted your affirmative report in the  
18 case, you issued two more, a rebuttal and reply; is that  
19 right?

20 A Yes.

21 Q Mr. Grice issued some reports, correct?

22 A A rebuttal and reply and an affirmative, yes.

23 Q And you had some back and forth with Mr. Grice about  
24 loans in those reports; is that right?

25 A Yes.

1 Q Mr. Castro issued some reports; do you know that?

2 A I do.

3 Q You had some back and forth in -- with Mr. Castro about  
4 some loans?

5 A That's correct.

6 Q And I took your deposition over a few days; do you  
7 remember that?

8 A I do.

9 Q And we talked about some loans during your deposition?

10 A We did.

11 Q You've been attending parts of this trial I think,  
12 right?

13 A I have.

14 Q You saw the opening statements?

15 A Some of those opening statements.

16 Q You saw -- you've seen some of the evidence come in?

17 A Yes.

18 Q You've seen Mr. Trumpp testify, I think?

19 A Very little of his testimony.

20 Q You saw Mr. Grice testify?

21 A Most of his testimony.

22 Q You've been responding to some of the Court's questions  
23 about loans just over the last few days, right?

24 A Yes.

25 Q And yet nothing you've seen in this litigation so far

1 suggests the 100 percent or a 99 percent breach rate is  
2 overstated; is that right?

3 A I didn't offer a breach rate in any of my documents.  
4 I've offered opinions on each individual loan and each  
5 individual breach finding. I never opined as to a rate.

6 Q Okay.

7 THE COURT: You're not talking this -- you're  
8 talking past each other right now. When Mr. Davis is  
9 talking about breach rate, I believe you're referring to the  
10 fact that you were asking Mr. Aronoff if he stands by his  
11 I'll call it opening opinion that 100 percent of the loans  
12 that have been presented by the Trustees for this trial have  
13 a breach with -- and an AMA, right? Isn't that what you're  
14 asking?

15 MR. DAVIS: That's the question, Your Honor. Yes.

16 THE COURT: Okay. So let's not go off on a track  
17 of breach rate, that's a different issue. Okay? So with  
18 that in mind, ask the question one more time, Mr. Davis.

19 MR. DAVIS: I can't say it any better than you  
20 did, Your Honor.

21 THE COURT: Well --

22 Q So after everything you've seen, after everything  
23 you've seen in this litigation, do you stand by your opinion  
24 that every loan and every breach that was submitted by the  
25 Trustees in this case were valid, save for the 30 or so that

1 you changed your mind on with respect to your back and forth  
2 with Mr. Grice?

3 A To the extent the threshold fact is accurate, yes.

4 Q So Mr. Aronoff, to support your opinions in this case,  
5 you say you're bringing to bear your experience in the  
6 residential mortgage industry; is that right?

7 A Among other industries, yes.

8 Q Okay. And to support your opinions in this case you  
9 say you're also bringing to bear your experience in the  
10 securitization industry, to the extent it relates to RMBS,  
11 right?

12 A Yes.

13 Q And to support your positions in this case you also say  
14 you're bringing to bear your experience in the cottage  
15 industry that's developed, post financial crisis, with  
16 respect to forensic reviews of loan pools, right?

17 A Well, part of my statement I was referring to the  
18 cottage industry in the context of adjectives. The industry  
19 isn't defined that way in my mind, it's the forensic loan  
20 review industry.

21 Q And you mean by that industry that subsequent to the  
22 financial crisis a large number of litigation matters  
23 related to putback claims required not only expertise with  
24 residential mortgage lending, but expertise in the conduct -  
25 - in the context of forensic loan reviews; is that right?



1 A As the sole purpose of their -- as the sole business  
2 purpose of any particular entity, that's correct.

3 Q And in your opinion, the plan administrator's loan  
4 review dramatically deviated from the standards and practice  
5 in this cottage industry of forensic loan reviews, right?

6 A I think that the process as I understand it deviated  
7 from my understanding of custom and practice with respect to  
8 forensic loan reviews.

9 Q You opine in this case that Mr. Grice conducted his  
10 review in a manner that's inconsistent with guidelines  
11 provided by the courts, correct? That was your opinion?

12 A In some respects, yes.

13 Q And you believe you're qualified to offer the opinion  
14 that Mr. Grice conducted his review in a manner inconsistent  
15 with guidelines provided by the courts. You believe you're  
16 qualified to give that opinion; is that right?

17 A To the extent Mr. Grice engaged in activities that  
18 would be conducted in the course of a forensic loan review,  
19 and to the extent courts have provided guidance, not as  
20 judicial precedent, because I'm not providing legal  
21 opinions, but as a description of industry custom and  
22 practice or as a confirmation of the recognition of industry  
23 custom and practice, yes, I stand by that opinion.

24 Q Okay. But I didn't ask you to the extent, I asked you  
25 whether you think you're qualified to opine that Mr. Grice

1 conducted his review in a manner inconsistent with  
2 guidelines provided by the courts. Are you qualified to  
3 give that opinion?

4 A In the context, as I just qualified it, yes.

5 Q And you feel it's your 30 years of experience in the  
6 residential mortgage lending industry, the securitization  
7 industry, to the extent that it relates to RMBS and the  
8 cottage industry of forensic loan reviews that qualifies you  
9 to offer that opinion, right?

10 A I'm not sure I understand why you keep repeat the  
11 cottage industry, so I don't know how to answer that  
12 question.

13 Q Mr. Aronoff, you're trained as a lawyer, correct?

14 A I went to law school and practiced law.

15 Q But you're not offering a legal opinion in this case,  
16 as I think you just said, right?

17 A That's correct.

18 Q Specifically, you're not offering a legal opinion about  
19 the representations and warranties at issue in this case,  
20 right?

21 A That's correct. I'm offering the commercial  
22 understanding.

23 Q And you haven't practiced law since 1987, right?

24 A That's correct.

25 Q On the other hand, you offered an opinion in this case,

1 in your report, concerning whether the plan administrator or  
2 Mr. Castro are interpreting materiality standard, meaning  
3 AMA, in a manner consistent with relevant case law, didn't  
4 you?

5 A I don't believe I did so.

6 Q Okay. Would you turn now, you'll find a binder in  
7 there which is your reply report, it has your rebuttal  
8 report in it, it's in the report's binder. And if you would  
9 turn to Page 77. Paragraph 51 you write, "As I noted in the  
10 Aronoff affirmative report --"

11 THE COURT: Hold on a second, Mr. Davis.

12 MR. DAVIS: I'm sorry.

13 THE COURT: Mr. Aronoff's --

14 MR. DAVIS: I'm sorry.

15 THE COURT: -- getting his place.

16 MR. DAVIS: I'm sorry.

17 MR. ARONOFF: Okay. Thank you, I'm with you.

18 Q As I noted in the Aronoff report, "With respect to its  
19 own repurchase claims, the plan administrator interpreted  
20 the materiality standard in a manner consistent with the  
21 Trustees' interpretation, industry practice and the relevant  
22 case law in which directly contravenes the opinions  
23 expressed by Mr. Castro in this report." Do you see this?

24 A I do.

25 Q Is that your opinion?

1 A I do see that.

2 Q And when discussing two of the key representations in  
3 the case, the no default representation and what you call  
4 the no untrue statement representation. You opine that the  
5 language of these two representations is clear and does not  
6 require explanation by the courts, correct?

7 A From the perspective an industry participant, and in my  
8 experience, that's correct.

9 Q And when responding to Mr. Castro's opinion on AMA, you  
10 said you don't believe the Court needs Mr. Castro's help to  
11 understand the meaning of the contract clauses that are the  
12 subject in Mr. Castro's report, right?

13 A I don't recall that specifically.

14 Q And if you'd look at Page 66 of your rebuttal report.  
15 Paragraph 124, are you with me?

16 A I see it.

17 Q "As explained below the contract clauses that are the  
18 subject of the Castro report are written in plain English.  
19 They contain little, if any, industry jargon. I do not  
20 believe the Court needs Mr. Castro's help to understand what  
21 these clauses mean." Is that your opinion, sir, in this  
22 report?

23 A Yes.

24 Q Please take a look at Appendix C now to your opening  
25 report. So if you'd flip back to your opening, you should

1 find the appendixes in the back of your report. And if you  
2 -- well first of all, do you recognize this as Appendix C to  
3 your opening report?

4 A It appears to be.

5 Q Okay. And if you look at -- well and in Appendix C,  
6 right, you tried to set out all the material on which you  
7 relied to issue your opinion, correct?

8 A In addition to the exhibits, yes.

9 Q Okay. Now, if you turn to Page 29, you list here,  
10 right, starting on that page, a number of cases which you  
11 relied on to form your opinion in this matter, right? A  
12 number of legal cases?

13 A Yes.

14 Q And your subsequent two reports, your rebuttal and  
15 reply reports also cite a number of legal cases, correct?

16 A That's correct.

17 Q And you rely on those legal decisions to support your  
18 opinions in this case, right?

19 A Yes.

20 Q Mr. Aronoff, at the time the protocol was put in place,  
21 you were the boss of the Duff & Phelps team, right,  
22 responsible for managing the Trustees' loan review?

23 A The forensic loan review portion, that's correct.

24 Q And you had significant input into the design of the  
25 Trustees' loan review during the protocol, correct?

1 A Can I hear that question again, please?

2 Q You had significant input into the design of the  
3 Trustees' loan review --

4 A Yeah.

5 Q -- during the protocol?

6 A Yes.

7 Q Now, when this estimation hearing or proceeding began,  
8 you were no longer with Duff & Phelps; is that right?

9 A I'm not sure I know when this estimation proceeding  
10 began.

11 Q When did you leave Duff & Phelps?

12 A The end of December 2015.

13 Q And when the Trustees retained you for purposes of this  
14 estimation proceeding, you were with Baker Tilly, correct?

15 A Yes.

16 Q And the Trustees could have hired anyone with  
17 experience in RMBS origination or repurchase claims to  
18 independently evaluate the breach claim submission process,  
19 right?

20 A I don't know what they knew or didn't know. I assume  
21 so.

22 Q But they decided to hire you to give that opinion,  
23 correct?

24 A Apparently. Yes.

25 Q Mr. Grice (sic), please turn to Page 7 of your reply

1 report now, so that should be the last report in your --

2 A Okay. You want me to do it or Mr. Grice?

3 Q Oh, I'm sorry. Mr. Aronoff.

4 A You asked Mr. Grice.

5 Q I knew I was going to do that.

6 THE COURT: Touché, Mr. Aronoff.

7 MR. DAVIS: I knew I was going to do that.

8 THE COURT: You even made Mr. Shuster smile.

9 MR. DAVIS: It was bound to happen.

10 Q And if you would, just take a moment to review  
11 Paragraph 8.

12 A On Page 7?

13 Q Yep, Page 7 of your reply.

14 A Oh, reply. Sorry, I'm in the wrong report.

15 Q That's okay.

16 A Okay.

17 Q So in your review, as expressed in this report, "It's  
18 absurd to posit, as Mr. Grice does, that the testifying  
19 expert cannot manage and have significant input into the  
20 design and implementation of the loan review being  
21 conducted, in order for such expert to formulate and support  
22 the opinions to be offered to the Court." Is that right?

23 A I stand by that statement.

24 Q And your view, "Requiring an expert with no firsthand  
25 knowledge of the underlying work would turn the industry

1 standard for forensic loan review on its head." Is that  
2 right?

3 A Yes.

4 Q And the industry we're talking about here is the  
5 forensic loan -- RMBS forensic loan review industry, right?

6 A Well, I think it's more than that. I talk about a  
7 forensic review and -- so that could touch on the forensic  
8 review industry. It would also touch on the context in  
9 which the forensic review is conducted, that is to determine  
10 whether or not there is a breach of representation and  
11 warranties in an RMBS securitization, which in turn depends  
12 on knowledge and experience, to a large extent, in  
13 residential lending. So I don't think it's limited to the  
14 forensic loan review industry.

15 Q Now, in Paragraph 9 you go on to say, "It is my  
16 understanding that courts have criticized experts with  
17 limited to no involvement with the underlying loan review."  
18 That's your opinion, right?

19 A That's my observation.

20 Q You get this understanding you reference here from your  
21 reading of some court opinions, don't you?

22 A As well as participation in the industry as an expert  
23 witness.

24 Q In fact, you believe that your personal involvement in  
25 the loan review process during the protocol should lead the



1 Court to conclude that you're actually better positioned to  
2 evaluate the Trustees' loan review process than Mr. Grice or  
3 Mr. Castro, correct?

4 A Certainly better than Mr. Grice or Mr. Castro to  
5 evaluate the Trustees' loan review process, yes.

6 Q Now, you told me, back in November, that you have no  
7 way --

8 THE COURT: I'm sorry, are -- were you just making  
9 a distinction between your loan review process and the  
10 Trustees' loan review process?

11 MR. ARONOFF: No, no. I was -- I was -- I was  
12 just commenting that I think I was in a better position to -  
13 -

14 THE COURT: Evaluate the process (indiscernible).

15 MR. ARONOFF: -- evaluate the process than Mr.  
16 Grice or Mr. Castro was.

17 THE COURT: You think you were in a better  
18 position to evaluate the process that you designed than Mr.  
19 Castro or Mr. Grice was?

20 MR. ARONOFF: Evaluate whether or not there were  
21 breach findings with respect to the loans.

22 THE COURT: No, that's not Mr. Davis's question.  
23 So go ahead, Mr. Davis.

24 Q Now, you told me, back in November, that you have no  
25 understanding, one way or another, whether the Court is

1 likely to make a finding on the quality of the Trustees'  
2 loan review process, right?

3 A I don't recall saying that.

4 Q Do you have an understanding, sitting here, whether the  
5 Court is likely to make a finding on the quality of the  
6 Trustee's loan review process?

7 A I don't know one way or the other.

8 Q So you have no understanding then whether the Trustees'  
9 loan review process, that you helped design and supervise,  
10 is essentially on trial in this proceeding?

11 A I would agree with that.

12 Q You agree with that?

13 A And you don't believe you have a vested interest in the  
14 outcome of this matter?

15 A I don't have a vested interest in the outcome of this  
16 matter, no.

17 Q Mr. Shuster asked you at your compensation the other  
18 day; do you remember that?

19 A Yes.

20 Q You said you were being compensated hourly, right?

21 A That's correct.

22 Q In fact, I think it's Baker Tilly that's being  
23 compensated for your work in this matter; is that right?

24 A That's absolutely right.

25 Q Okay. And Baker Tilly's charging your time at an

1 hourly rate of \$985; is that correct?

2 A I believe so.

3 Q When I asked you in October at your deposition how much  
4 you had been paid in connection with your work on this  
5 proceeding, you told me you had no idea, right?

6 A That's correct.

7 Q And you could not give me even a ballpark estimate,  
8 right?

9 A That's correct.

10 Q And in October you also could not tell me how many  
11 hours you'd work on this estimation proceeding, right?

12 A That sounds right.

13 Q Now, you're fully responsible for this engagement, as  
14 far as Baker Tilly is concerned, right?

15 A From an administrative standpoint, that's correct.

16 Q But when I asked you, in November, your second  
17 deposition, you couldn't tell me how much Baker Tilly has  
18 billed the Trustees for its work on this engagement,  
19 correct?

20 A That's correct.

21 Q And when you I asked you, in November, how many hours  
22 you believed for this engagement, you could not tell me,  
23 except to say it was more than last time, right?

24 A Yes.

25 Q Now, in December 2014 you testified at a hearing in

1 this bankruptcy case; do you recall that?

2 A I do.

3 Q Do you recall, prior to that hearing, you submitted a  
4 declaration in connection with a motion leading to the  
5 hearing related to the loan review protocol?

6 A Yes.

7 Q Okay. I'm going to ask you to go to Tab 2 of your  
8 small binder. You should find the declaration in there.  
9 It's PA-71.

10 A I am there.

11 Q Do you recall this declaration?

12 A Not specifically, but looking at it it looks like what  
13 I best remember.

14 Q Is that your signature on the --

15 A It is.

16 Q It is? And this is a declaration made under oath,  
17 right?

18 A Yes.

19 Q So if you look at Page 5 of this declaration, you  
20 stated here that the loan review protocol that was being  
21 proposed by Lehman was "commercially unreasonable,  
22 cumbersome and unnecessarily bureaucratic." That's what you  
23 said in this declaration, right?

24 A Yes, it is.

25 Q And you also the proposed protocol, "ignores well-

1 established industry custom and practice with respect to the  
2 administration of putback claims," right?

3 A Yes.

4 Q But when I asked you about this in your deposition you  
5 told me you didn't have an opinion whether this protocol  
6 process that occurred, the process in which you were  
7 involved, was in fact commercially unreasonable, cumbersome  
8 and unnecessarily bureaucratic; is that right?

9 A I don't know if that's exactly what I said. I think I  
10 said I wasn't asked to provide that opinion for purposes of  
11 this engagement.

12 Q Mr. Grice, oh boy, I keep doing it. Mr. Aronoff, you  
13 don't know who, on behalf of the Trustees, made the final  
14 decision about which loan review firms to select, correct?

15 A My understanding is that the Trustees did not make the  
16 final determination as to which loan review firms to use in  
17 connection with the forensic review.

18 Q Mr. Grice, at your deposition --

19 THE COURT: Not Mr. Grice.

20 MR. DAVIS: Oh, gosh.

21 Q Mr. Aronoff, I'm sorry, at your deposition did I ask  
22 you the following question and did you give me the following  
23 answer: "Do you know who made the --"

24 A Is it --

25 THE COURT: Yeah, let's have a page and line

1 reference.

2 MR. DAVIS: Sorry. Page 68, Line 7 to 9.

3 THE COURT: Thank you.

4 MR. ARONOFF: Which deposition?

5 MR. DAVIS: This is your first deposition.

6 Q "Do you know who made the final decision about which  
7 firms to select?" Answer: "I don't." Did I ask you that  
8 question and did you give me that answer?

9 A I see the question and I see the answer.

10 Q Now, you testified here in court on Tuesday, that for  
11 occupancy claims --

12 THE COURT: I'm sorry. Let's just -- that -- was  
13 -- is the answer to Mr. Davis's question yes or is the  
14 answer only that you see the words on the page?

15 MR. ARONOFF: I see the words on the page. The --  
16 I thought the question went to who at Duff & Phelps made the  
17 final decision. The -- and so that's the answer I gave. I  
18 did not -- it wasn't me, I didn't know if it was another  
19 member of the Duff & Phelps team. But my understanding was,  
20 and continues to be that Duff & Phelps engaged the firms to  
21 conduct the loan reviews.

22 THE COURT: Okay. Thank you.

23 Q Now, you testified here in court on Tuesday that for  
24 occupancy claims, loan reviewers were instructed to look for  
25 evidence of extenuating circumstances; do you recall that

1 testimony?

2 A Yes.

3 Q And if we could take a look at TRDX-178, which is --  
4 it's in Tab 10 of your binder, it's your slide that's up on  
5 the screen. The second bullet on this slide references  
6 specific instructions for certain breach categories; do you  
7 see that?

8 A Yes.

9 Q And that's reference specific instructions for loan --  
10 provided to the law review firms for certain breach  
11 categories, correct?

12 A Yes.

13 Q Yet when I took your deposition you told me that you  
14 did not provide the loan review firms with a written set of  
15 policies and procedures pursuant to which those firms would  
16 identify and support the breach findings under the protocol  
17 from a substantive standpoint; is that right?

18 A I believe that's correct.

19 Q And you said that to your knowledge there was no  
20 standardized set of written guidelines issued to the loan  
21 review firms by which they would be instructed to identify  
22 and support the breach findings, correct?

23 A There was no standardized set of guidelines, that's  
24 correct.

25 Q In fact, you said, "It wasn't as Duff & Phelps gave the

1 loan review firms a policies and procedures or instruction  
2 manual to tell them how to run their loan reviews," correct?

3 A That's correct.

4 Q Now, Mr. Aronoff, you had no involvement at all in the  
5 process of gathering the loan files at issue here, right?

6 A I'm sorry, can I hear the question again?

7 Q You had no involvement at all in the process of  
8 gathering the loan files that are at issue in this case?

9 A That's accurate.

10 Q Okay. And you had no role in deciding what documents  
11 would be requested from the servicers under the protocol,  
12 correct?

13 A Yes.

14 Q And you have no idea whether Duff & Phelps requested  
15 origination or servicing files from any source other than  
16 the servicers, correct?

17 A Yes.

18 Q And you don't know whether Duff & Phelps requested  
19 copies of the mortgage loan files from the Trustees, right?

20 A That's correct.

21 Q And you don't know whether the Trustees ever issued  
22 some subpoenas for the production of loan files, right?

23 A Right.

24 Q And you don't know whether the Trustees asked this  
25 Court for any assistance in gathering loan files, correct?



1 A That's correct.

2 Q You don't know how the loans that were sent to the loan  
3 review firms were chosen; is that right?

4 A That's not entirely correct.

5 Q Okay. Page 160 of --

6 THE COURT: Deposition, I believe.

7 Q -- of your deposition transcript. I'm sorry.

8 A Same one?

9 Q 160, first deposition transcript, 160, Line 22. Did I  
10 ask you this question, and did you give the answer?

11 Question: "Do you know how the loans that were sent to the  
12 loan review firms were chosen?" Answer: "No."

13 A I -- I'm sorry, I must be in the wrong place.

14 Q It's Page 160.

15 A Right.

16 Q Line 22, towards the bottom of that page.

17 A Okay. I see that.

18 Q Did I ask you that question and did you give that  
19 answer?

20 A Yes.

21 Q And you don't know how the loan review firms had access  
22 to the loan files they were assigned to review, right?

23 A No.

24 Q Now, Mr. Grice, Duff & -- Mr. Aronoff --

25 THE COURT: This is very interesting, Mr. Davis.

1 MR. DAVIS: I know, there's something going on.

2 THE COURT: Can we get some therapy overnight  
3 tonight?

4 MR. DAVIS: Or medication, one or the other.

5 Q Now, Duff & Phelps had two levels of QC, correct?

6 A Yes.

7 Q They were called QC1 and QC2?

8 A That's correct.

9 Q Okay. Would you turn to Page 22 of your opening  
10 report, please? Are you there with me?

11 A Yes.

12 Q Okay. And is this where you describe the Duff & Phelps  
13 QC process in your report?

14 A I definitely described it here, I don't know if this is  
15 the only place I described it.

16 Q Okay. Let me direct your attention to the sentence  
17 that's about two-thirds of the way down. You -- actually a  
18 couple of sentence -- you said here, "When the breach  
19 findings and claim submission packages were received by Duff  
20 & Phelps, the QC1 team examined these materials. The QC1  
21 team determined whether the supporting documents and the  
22 description of the breach findings supported the cited  
23 breaches, reviewed the descriptions of the breach findings  
24 to assure they clearly articulated the basis or bases for  
25 the breach findings." Did I get that right?

1 A Yes.

2 Q Okay. So let's break that down for a minute. First of  
3 all, it's not really true that the QC1 team reviewed all the  
4 breach findings, is it?

5 A I believe they did.

6 Q Well Mr. Esses has testified that certain missing  
7 document claims were not sent to the QC team. Is he  
8 mistaken?

9 A I don't know.

10 Q Now, if he's right that certain missing document claims  
11 were not QC'ed, that might help explain why the plan  
12 administrator found a lot of the documents that the Trustees  
13 said were missing, correct?

14 A I don't know. I don't know that to be the case.

15 Q Now, you say here that, "The QC1 team reviewed the  
16 supporting documents and the descriptions of the breach  
17 findings," right?

18 A Yes.

19 Q But the QC1 team did not review the underlying loan  
20 files as part of their process, correct?

21 A That's correct.

22 Q You didn't want the QC1 team poking around in the loan  
23 files, right?

24 A Not unnecessarily, no.

25 Q Now, yesterday Mr. Shuster spoke with you a bit about

1 evidence types. Do you remember there was a slide up there  
2 that we had a list of evidence types?

3 A I do.

4 Q And at the end of that discussion he asked you whether  
5 the Trustees' forensic loan reviews were holistic. Do you  
6 remember that question?

7 A I do.

8 Q And you told us that, "If a holistic review means to  
9 consider a particular piece of supporting evidence in the  
10 context of the totality of the entire file, then yes, it was  
11 holistic." That's the answer you gave, right?

12 A That sounds familiar.

13 Q You also told us that the loan review firms were  
14 expected to conduct such a holistic review, correct?

15 A Yes.

16 Q And then you said, "To the extent it was believed or  
17 discovered in QC that there was any kind of failure to  
18 evaluate the sufficiency or meaning of any of these sources  
19 of evidence properly, in the context of the entire file,  
20 that was something that was communicated back to the loan  
21 review firms," and that's what you said yesterday, right?

22 A I don't recall that specifically.

23 Q Okay. Well, since the QC team was not looking at the  
24 loan file, there was no way for the QC team to assess  
25 whether the evidence being used to support the breach claims

1 that had in fact been considered, had in fact been  
2 considered in the context of the totality of the entire  
3 file; that's true, right?

4 A That's true, but that wasn't part of the scope of QC1's  
5 review.

6 Q Okay. And if the QC team did not look at loan files,  
7 they would have no way of knowing, for example, that a  
8 document thought missing was actually in the loan file,  
9 right?

10 A The QC1 review team would have no way of knowing if a  
11 document missing was actually in the file, that's correct.

12 Q And if the QC1 team did not look in the loan files,  
13 they would have no way of confirming whether there was  
14 information, inconsistent with the breach claim, in the loan  
15 file that was not included in the claim package, right?

16 A At the QC1 level, that's correct.

17 Q Let's take a look at TRDX-18, please. This is also  
18 your slide from yesterday or the day before, right?

19 A I recognize it. Yes.

20 Q So Mr. Aronoff, you can't give the Court any sense of  
21 how many breaches Duff & Phelps declined to submit to the  
22 protocol because the identified breaches did not result in  
23 AMA as a result of the QC process, can you?

24 A I don't think I -- I don't understand the question.

25 Q Okay. You can't give the Court any sense of how many

1 breaches Duff & Phelps -- breaches that came up from the  
2 loan review firms, Duff & Phelps declined to submit to the  
3 protocol, because the identified breaches did not result in  
4 AMA, can you?

5 A That's not information that was -- that was provided to  
6 me in the preparation of this report. That's correct.

7 Q How many claims --

8 THE COURT: I'm sorry. Now I'm lost. What's the  
9 "that information" in your answer?

10 MR. ARONOFF: Well, I left Duff & Phelps before  
11 the process was completed. And so I don't know what  
12 happened during that intervening period and why certain  
13 claims might not have ultimately been provided through the  
14 protocol, even if they made it up to QC2. QC2 is where the  
15 final AMA determination would have been made.

16 THE COURT: Go ahead, Mr. Davis.

17 Q Mr. Grice (sic), how many -- looking at your chart, how  
18 many claims were filtered out at the second level review  
19 stage?

20 A I don't know.

21 Q How many claims were filtered out at the QC1 level  
22 review stage?

23 A I don't have that data.

24 Q How many claims were filtered out at the QC2 level  
25 stage?

1 A Oh, I thought that's the first one we were talking  
2 about.

3 Q No.

4 A I misunderstood your question.

5 Q How many claims were filtered out at the QC1 level?

6 A I don't know.

7 Q How many claims were filtered out at the QC2 level?

8 A I don't know.

9 Q So you don't know, whether in reality this chart  
10 actually looks like a funnel, correct?

11 A I do.

12 Q Excuse me?

13 A I do know it looks like a funnel.

14 Q Why is that, sir?

15 A Because it started at the top with 170,000, it ended  
16 with 92,000 and along the way, at each level of review, a  
17 breach finding could have been rejected.

18 Q You can't tell me at what level of review any given  
19 breach finding was rejected, can you?

20 A That's correct.

21 Q They could all have been rejected at the initial loan  
22 review stage; is that right?

23 A They could have, but I know that not to be the case.

24 Q How many are you aware of what filtered out of the  
25 process after the initial loan review stage? How many

1 claims?

2 A I just said I don't know.

3 Q Okay.

4 A But I know some were.

5 Q Mr. Grice (sic), the loan review firms --

6 THE COURT: Not Mr. Grice.

7 MR. DAVIS: Oh my gosh. Mr. Aronoff.

8 THE COURT: We should just stipulate that for the  
9 purposes of this --

10 MR. DAVIS: Yeah.

11 THE COURT: -- proceeding you shall be called Mr.  
12 Grice.

13 MR. SHUSTER: I object.

14 THE COURT: Not your first choice. Mr. Shuster,  
15 welcome back.

16 MR. SHUSTER: Thank you.

17 THE COURT: This is the point in the --

18 MR. DAVIS: I now have it on a sticky in front of  
19 me.

20 THE COURT: -- this is the point in the case where  
21 everybody's getting punchy. So hopefully not at your  
22 expense.

23 MR. DAVIS: And now I have it on two stickies.

24 MR. ARONOFF: Along those lines, if we're at a  
25 natural breaking point at about 4, can we take a break?



1 THE COURT: We can take a -- would you prefer a  
2 break right now?

3 MR. ARONOFF: Sure. If that's okay with --

4 MR. DAVIS: Whenever is convenient.

5 THE COURT: And Mr. Davis can go practice calling  
6 you Mr. Aronoff.

7 Let's take a break right now and we'll come back  
8 in ten minutes, all right?

9 (Recess)

10 THE COURT: Folks. Everyone? If I could ask you  
11 for a moment, so it's been determined that there was a spill  
12 of cleaning solution right near whatever it is that pushes  
13 air through the vents and they're going to have to --  
14 they're in the midst of trying to clean it up. But I don't  
15 think it's a good idea to continue to stay here, because  
16 it's pretty hard to take.

17 So they've assured me that it will not be like  
18 this tomorrow -- I'm sorry, on Monday, because we're not  
19 here tomorrow. So then that does cut us short by about an  
20 hour today, so that the concept is that we would resume on  
21 Monday, with thanks to Mr. Aronoff, at 10:15 and hopefully  
22 conclude his cross and redirect by the end of Monday. All  
23 right?

24 Okay. Thank you all very much.

25 GROUP: Thank you, Your Honor.

1 THE COURT: Have a good couple of days.

2 MR. ARONOFF: Your Honor?

3 THE COURT: Yes.

4 MR. ARONOFF: I had one question?

5 THE COURT: Yes, sir.

6 MR. ARONOFF: I know I'm bound not to talk to  
7 anyone over the weekend --

8 THE COURT: Yeah.

9 MR. ARONOFF: -- and I haven't been talking to  
10 anyone about anything, but I wanted to know if it was all  
11 right if I talk to my Baker Tilly colleagues about other  
12 matters.

13 MR. SHUSTER: He has other reports due in other  
14 matters. If that's okay with you, Your Honor?

15 MR. DAVIS: Yeah, I mean if there's no -- nothing  
16 -- no overlap --

17 THE COURT: Right.

18 MR. ARONOFF: No, no.

19 MR. DAVIS: -- with what's going on here in this  
20 issue.

21 THE COURT: About other matters I have no problem  
22 with that and we have that on the record.

23 MR. ARONOFF: Yeah.

24 THE COURT: Okay. Thank you for asking. Okay.

25 Thank you, folks.

1 (Whereupon these proceedings were concluded at 4:02 PM)  
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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.

Sonya  
Ledanski Hyde

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Date: December 18, 2017